

(22,027.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 212.

J. W. CALNAN COMPANY, APPELLANT,

vs.

HENRY A. DOHERTY, MASSACHUSETTS BREWERIES
COMPANY, AND MECHANICS TRUST COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIRST CIRCUIT.

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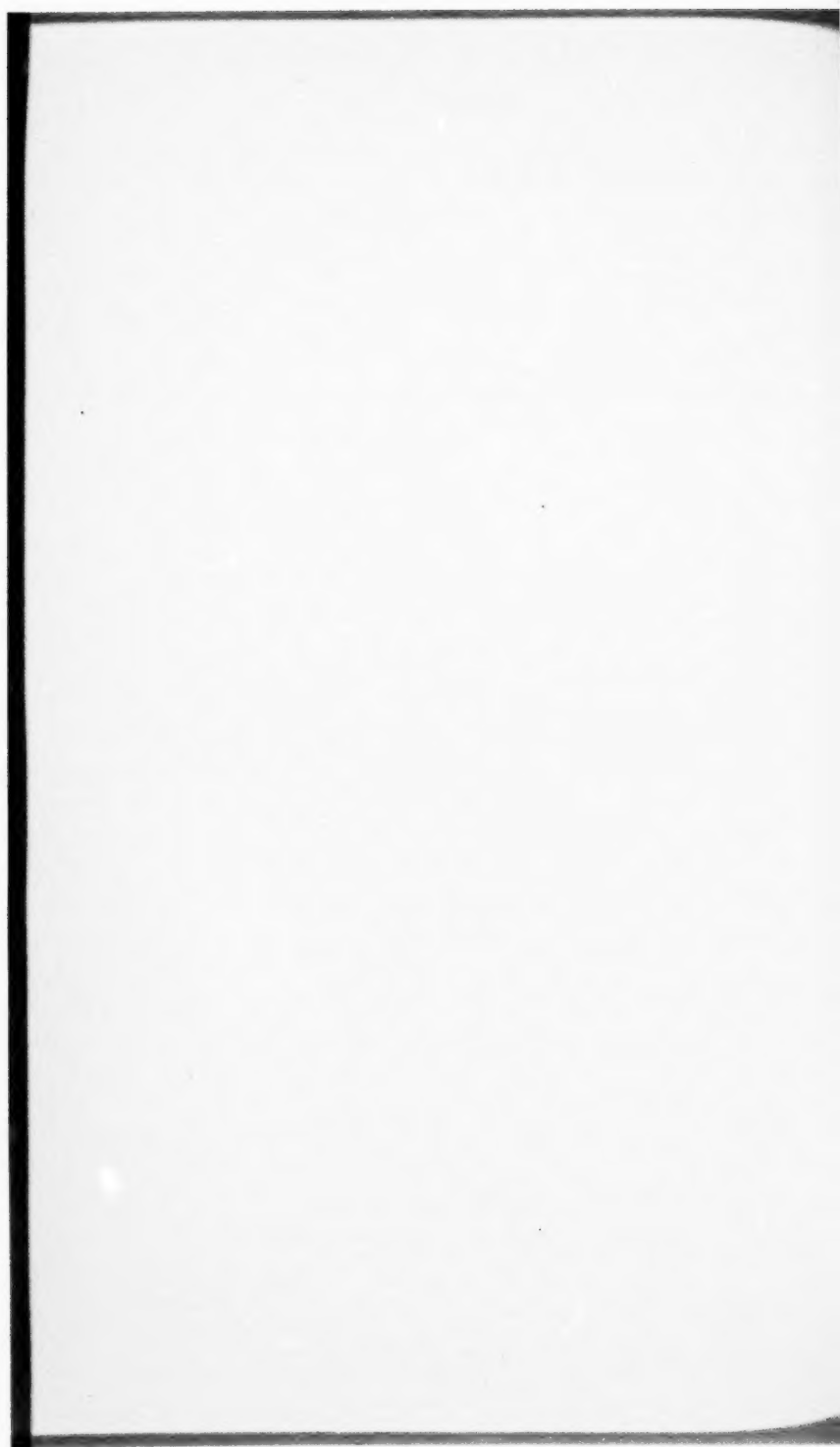
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Transcript of Record.

United States Circuit Court of Appeals for the First Circuit.
October Term, 1908.

No. 831.

J. W. CALNAN COMPANY, Bankrupt, Appellant,

v.

HENRY A. DOHERTY et al., Creditors, Appellees.

Appeal from the District Court of the United States for the District
of Massachusetts, from Final Decree (Dodge, J.), May 13, 1909.

Clarence F. Eldredge, for Bankrupt, Appellant.

John H. Blanchard, for Henry A. Doherty, Creditor, Appellee.

Gilbert F. Ordway, Clark & Ordway, for Massachusetts Breweries
Company, Creditor, Appellee.

Boston: Printed under direction of the clerk. 1909.

1 United States Circuit Court of Appeals for the First Circuit,
October Term, 1908.

No. 831.

J. W. CALNAN COMPANY, Bankrupt, Appellant,

v.

HENRY A. DOHERTY et al., Creditors, Appellees.

Transcript of Record of District Court.

[Filed in Circuit Court of Appeals June 19, 1909.]

Creditors' Petition.

[Filed August 29, 1908.]

To the Honorable Frederic Dodge, Judge of the District Court of
the United States for the District of Massachusetts:

The petition of Henry A. Doherty, doing business under the name
and style of M. Doherty & Company, and having his usual place of
business in Boston, in said district, respectfully shows: That J. W.
Calnan Company, a corporation duly organized according to law and
having an usual place of business in Boston, in said district, has
for the greater portion of six months next preceding the date of the
filing of this petition had its principal place of business at Boston,
in the county of Suffolk, and State and district aforesaid, and owes

debts to the amount of \$1000. That your petitioners are creditors of said J. W. Calnan Company having provable claims amounting in the aggregate, in excess of securities held by them, to the sum of \$500. That the nature and amount of your petitioners' claims are as follows:—

That of said Henry A. Doherty being upon two promissory notes dated November 23, 1907, and December 20, 1907,
2 for three hundred seventy-three and 33/100 dollars (\$373.33) and three hundred forty and 53/100 dollars (\$340.53), respectively;

That the said J. W. Calnan Company is a corporation organized under the laws of the Commonwealth of Massachusetts, and that it is engaged principally in trading and mercantile pursuits;

That upon information and belief said Doherty alleges that the said J. W. Calnan Company has less than 12 creditors.

And your petitioners further represent that said J. W. Calnan Company is insolvent, and that within four months next preceding the date of this petition the said J. W. Calnan Company committed an act of bankruptcy, in that he did heretofore, to wit, on or about the thirtieth day of April, 1908, and at divers other dates in May, June and July, 1908, being insolvent, transfer and deliver a portion of its property to certain of its creditors with intent to prefer such creditors over its other creditors, the names of said creditors and the amounts paid to them as aforesaid being to your petitioner-unknown.

And your petitioners further represent upon information and belief and therefore allege that on or about the thirtieth day of April, 1908, and at divers other dates in the months of May, June and July, 1908, the said debtor being insolvent, conveyed, transferred, concealed or removed, or permitted to be concealed or removed a portion of its property with intent to hinder, delay, or defraud its creditors, or certain of them, to wit, that it so concealed, transferred and removed certain merchandise and certain moneys, the proceeds of sales in its said business, the amount of said money and other property being to your petitioners unknown.

Wherefore your petitioners pray that service of this petition, with a subpoena, may be made upon J. W. Calnan Company, as provided in the Acts of Congress relating to bankruptcy, and that he may be adjudged by the court to be a bankrupt within the purview of said acts.

HENRY A. DOHERTY, *Petitioner.*

JOHN H. BLANCHARD, *Attorney,*
Address, 18 Tremont Street, Boston.

3 UNITED STATES OF AMERICA,
District of Massachusetts, ss:

Henry A. Doherty, being the petitioner above named, does hereby make solemn oath that the statements contained in the foregoing petition, subscribed by him, are true.

HENRY A. DOHERTY, *Petitioner.*

Before me this twenty-eighth day of August, 1908.

HARRY C. PINKOFSKY,
Justice of the Peace.

Answer of J. W. Calnan Company.

[Filed September 28, 1908.]

In the District Court of the United States for the District of
Massachusetts.

In Bankruptcy. No. 14061.

In the Matter of J. W. CALNAN COMPANY, Debtor.

At Boston, in said district, on the twenty-sixth day of September,
A. D. 1908.

And now the J. W. Calnan Company appears and admits that the J. W. Calnan Company is a corporation organized under the laws of the Commonwealth of Massachusetts, and has a usual place of business in Boston, in said district, but denies that it has committed any of the acts of bankruptcy set forth in said petition; and denies that it is insolvent; and it further denies that the petitioner has any provable claim against it, for the reason that it has a larger aggregate of claims against the petitioner than he has against it.

And it further avers that it should not be declared bankrupt for any cause in said petition alleged; and this it prays may be inquired of by the court.

J. W. CALNAN COMPANY.
JOHN P. WISE, *Treasurer.*

4 Subscribed and sworn to before me this twenty-sixth day
of September, A. D. 1908, by said John P. Wise, Treasurer.

JOHN W. CONVERSE,
Notary Public.

Referred to Referee J. M. Olmstead to ascertain facts and report thereon under Rule XII. of General Orders in Bankruptcy.
By order of court, October 12, 1908.

MARY E. PRENDERGAST,
Deputy Clerk.

Motion to Amend Answer and Order Thereon.

[Filed November 23, 1908.]

UNITED STATES OF AMERICA:

In the District Court of the United States for the District of
Massachusetts.

In Bankruptcy. No. 14061.

In the Matter of J. W. CALNAN COMPANY, Alleged Bankrupt.

Now comes the respondent and moves to amend its answer by adding thereto the following:—

It denies that the respondent is indebted to the petitioner in any sum or in the manner and form alleged, and that the alleged notes described in the petition as being due to the petitioner from the respondent are without consideration and of no validity.

J. W. CALNAN COMPANY,
By its President, JOHN A. SULLIVAN.

Subscribed and sworn to before me this twenty-third day of November, A. D. 1908.

JOHN W. CONVERSE,
Notary Public.

May be filed and allowed.

JOHN H. BLANCHARD,
Attorney for Petitioner.

5 The foregoing motion is hereby allowed, counsel for petitioning creditor assenting thereto.

By order of court, November 23, 1908.

MARY E. PRENDERGAST,
Deputy Clerk.

Referred to Referee J. M. Olmstead to ascertain facts and report thereon under Rule XII. of General Orders of Bankruptcy.

By order of court, November 23, 1908.

MARY E. PRENDERGAST,
Deputy Clerk.

Petition to Intervene by Mechanics Trust Company.

[Filed November 25, 1908.]

District Court of the United States, District of Massachusetts.

In Bankruptcy.

In re Petition

v.

J. W. CALNAN COMPANY.

To the Honorable the Judge of the District Court of the United States for the District of Massachusetts:

Respectfully represents the Mechanics Trust Company, a corporation duly organized under the laws of the Commonwealth of Massachusetts, and having its usual place of business at Boston, in said district, that it is a creditor of the J. W. Calnan Company and has a provable claim against said J. W. Calnan Company amounting in the aggregate, in excess of securities held by it, to the sum of ten hundred thirty-eight and 71/100 dollars (\$1038.71).

The nature of your petitioner's claim is in the form of a judgment obtained by it against said J. W. Calnan Company and others, and issued by the municipal court of the city of Boston, on September 25, 1908, which case is numbered on the docket of said court, and no part of said judgment has been satisfied.

That a petition in bankruptcy has been filed in this court against the J. W. Calnan Company by Henry A. Doherty, case No. 14,061, in bankruptcy, praying that it may be adjudged a bankrupt, and your petitioner hereby intervenes and joins in the petition of Henry A. Doherty, and prays that said J. W. Calnan Company be adjudged a bankrupt.

MECHANICS TRUST COMPANY,
By S. A. MERRILL,
Treasurer, Petitioner.

H. M. BURTON,
Attorney for Petitioner.

District Court of the United States.

DISTRICT OF MASSACHUSETTS,
Suffolk, ss:

Then personally appeared Samuel A. Merrill, treasurer of the Mechanics Trust Company, the petitioner above named, and makes solemn oath that the statements contained in the foregoing petition subscribed by him are true, before me this twenty-fifth day of November, A. D. 1908.

[SEAL.]

HIRAM BENTON,
Notary Public.

At a regular meeting of the directors of the Mechanics Trust Company, held at Boston, November 25, 1908, the following vote was passed:—

Voted: That the treasurer, for and in behalf of this corporation, is directed to intervene as a petitioning creditor in the bankruptcy proceedings against the J. W. Calnan Company now pending in the District Court of the United States for the District of Massachusetts, in bankruptcy, wherein an involuntary petition was filed by Henry A. Doherty v. J. W. Calnan Company praying that said J. W. Calnan Company be adjudged a bankrupt.

A true copy:

Attest: SAMUEL A. MERRILL, *Secretary*.

Withdrawal of Intervening Petition of Mechanics Trust Company.

[Filed January 15, 1909.]

UNITED STATES OF AMERICA:

In the District Court of the United States for the District of Massachusetts.

In the Matter of J. W. CALNAN COMPANY, Alleged Bankrupt.

7 Now comes the Mechanics Trust Company and hereby withdraws its intervening petition heretofore filed in said cause.

MECHANICS TRUST COMPANY,
By Its Attorney, H. M. Benton.

Intervening Petitions of Massachusetts Breweries Company.

[Filed January 1, 1909.]

In the District Court of the United States for the District of Massachusetts.

In Bankruptcy. No. 14061.

J. W. CALNAN COMPANY, Alleged Bankrupt; HENRY H. DOHERTY, Petitioner.

And now comes the Massachusetts Breweries Company a corporation duly organized according to the laws of the State of Virginia, and having its usual place of business in Boston, in the county of Suffolk and said district, and represents that it is a creditor of said J. W. Calnan Company to the amount of nine hundred sixty-three and 75/100 dollars (\$963.75) upon an open account for merchandise consisting of beer and ale sold and delivered by it to said

J. W. Calnan Company, for which it holds no security, and it hereby joins in the petition heretofore filed by said Henry H. Doherty.

MASSACHUSETTS BREWERIES
COMPANY.

EDWARD RUHL,

*Secretary and Chief Financial
Officer in the Absence of the
Treasurer, now in Europe.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

Edward Ruhl, the secretary of the Massachusetts Breweries Company, a corporation, the intervening petitioner above named, does hereby make solemn oath that the statements contained in the foregoing petition by him subscribed are true.

EDWARD RUHL.

8 Before me this thirty-first day of December, 1908.
ALBERT E. LITTLE,
Justice of the Peace.

Report of Referee on Question of Adjudication.

[Filed March 10, 1909.]

In the District Court of the United States for the District of Massachusetts.

In Bankruptcy. No. 14061.

In the Matter of J. W. CALNAN COMPANY, Alleged Bankrupt.

To the Honorable Frederic Dodge, Judge of said Court:

This was a petition by Henry A. Doherty against the J. W. Calnan Company, alleging that there were less than 12 creditors, filed on the twenty-ninth day of August, 1908. On the twenty-fifth day of November the Mechanics Trust Company intervened, and on the first day of January, 1909, the Massachusetts Breweries Company intervened. At the hearing the respondent admitted the insolvency of the company, and inasmuch as it did not produce a list of more than 12 creditors the allegation of the petition that there were less than 12 creditors is admitted.

The acts of bankruptcy alleged were fraudulent conveyances and preferences. The respondent denied that the intervening creditors had valid provable claims. The facts in this proceeding I find to be as follows:

The respondent did a retail liquor business in Boston, at 321 Tremont Street. Originally the business was conducted under the name of J. W. Calnan, then John P. Wise, then John P. Wise &

Company, subsequently as Wise & Calnan, afterwards as J. W. Calnan & Company, and finally J. W. Calnan Company. After the purchase from J. W. Calnan, John P. Wise was and continued to be the controlling person in this business, and I find that through all

its changes and transmutations Mr. Wise was and is the real
9 person in the conduct of this business. The evidence showed that Mr. Wise had been in Boston at the time of the hearing,

but he was carefully kept in concealment, or at any rate was not produced, and his testimony would have been of great assistance in clearing up any doubts that may exist in reference to this case. Mr. Wise, when conducting the business of J. W. Calnan & Company, had in his employ a Mr. Sullivan, who testified. On June 1, 1902, whether because of domestic troubles, as is intimated by questions put to Mr. Sullivan, or from some other cause, Mr. Wise conceived the idea of organizing a corporation known as the J. W. Calnan Company. The name of Mr. Wise frequently appeared on the license, and sometimes his sister's name appeared with him, and at one time Mr. Sullivan's name appeared. On the first day of June, 1907, Mr. Wise, for some reason, made an alleged bill of sale of the business to Mr. Sullivan, who at that time was, as he admitted, merely a figurehead, and, although president of the Calnan Company, had only one share of stock. At all times Mr. Sullivan continued to be subject to the orders of Mr. Wise, was absolutely without capital, and was a bartender upon a small salary. Throughout all the transactions of the corporation Mr. Wise continued to manage it as if he alone were the owner. No vote of the corporation is shown for the bill of sale of the business to Mr. Sullivan, assuming that the corporation's business, and not that of J. W. Calnan & Company, was sold. At no time was the bill of sale produced. The evidence showed, however, that on the same day Mr. Sullivan gave to Rueter & Company a mortgage for \$9000, and then executed a second mortgage of \$9000 to Mr. John P. Wise, stating that the second mortgage was subject to the first mortgage to Rueter & Company. In this case it is a significant fact that Mr. Wise assented to the mortgage to Rueter & Company, an act which would appear to be entirely unnecessary if he had sold the business outright to Mr. Sullivan. Mr. Sullivan continued the business as J. W. Calnan & Company, but paid for the goods with checks of the J. W. Calnan Company, or the Bay State Realty Company, which was a concern
10 establish about this same time by Mr. Wise, and to which the second mortgage on July 1, 1907, had been assigned.

Mr. Sullivan says that when he got the checks of the Calnan Company or Bay State Realty Company with which to pay bills he gave Mr. Wise the money for them. About this time, in 1907, Messrs. Michael H. Curley and Michael Murray had dealings with Calnan & Company, and when bills were paid the checks were made out to John P. Wise. Mr. Sullivan admits he receipted the Murray bill in the name of John P. Wise, by J. A. Sullivan.

A very significant piece of testimony as showing the relationship that Mr. Sullivan bore to Mr. Wise in the business was a postal dated February, 1908, signed by Mr. Sullivan, to Doherty & Company,

the petitioning creditor, asking for the delivery of certain goods which had not arrived, and stating "that the boss would not like it." This "boss" was undoubtedly Mr. Wise, for whom Mr. Sullivan was a mere agent, and who was the real principal in this whole business.

Efforts were made by the respondent to show that in correspondence with Curley & Company, they had endeavored to correct a charge which was improperly made to the corporation on account of the receipt of checks from the corporation, but it will be noticed that this correction was admitted to be made by the respondent long after the filing of the petition, and after the respondent had established its line of defence.

The validity of the claim of Doherty & Company was disputed, on the ground that John P. Wise and Doherty & Company had for years exchanged notes for each other's mutual accommodation. This was a fact, but most if not all of the notes which had been given for each other's accommodation appeared to have been taken care of at their maturity, and I find that Doherty & Company have a valid claim as set forth in the petition. As to the Massachusetts Breweries Company, it is admitted that they were creditors of Calnan & Company and not of the J. W. Calnan Company. Inasmuch as I have found that these two concerns were one and substantially owned by John P. Wise this defence is not sustained, and I find that the claim of the Massachusetts Breweries Company is a valid claim against the J. W. Calnan Company; my reason for so finding is that a court of equity will look through and
11 beneath the various forms and transmutations of a business and will brush aside all subterfuges, and undertake to arrive at a true understanding of the actual relations. In re Holbrooke Shoe & Leather Co., 165 Fed. 973.

During the hearing there occurred a very extraordinary development, and a repetition of a purchase of claims, which is of late becoming increasingly prevalent, and which to the mind of the referee the court should rebuke. The Mechanics Trust Company had obtained a judgment against John P. Wise and the J. W. Calnan Company. After the filing of the petition, this claim was purchased by John P. Wise through his sister, and a check therefor was given by Mr. Eldredge, counsel for the respondent, which check for \$1059.48 I ordered impounded. I find, therefore, that the Mechanics Trust Company still remains a petitioning creditor in the sum of \$1038.71, as alleged in its intervening petition, and as authority for this contention I cite the opinion of Judge Lowell in re Cronin, 98 Fed. 584, in which he states: "After petitioners have joined in a petition, they cannot ordinarily withdraw against the wishes of their fellow petitioners," citing Lowell on Bankruptcy, Section 49, in which section the late Judge John Lowell lays down the following proposition: "Where the statute requires more than one creditor to apply, no creditor who has joined in the petition can withdraw against the will of his co-petitioners." And as further authority for my finding and decision, I desire to cite the case of In re Coburn, 126 Fed. 218, 219, in which the court says: "Tender of payment to a petitioning creditor does not defeat the petition"; and in support of this

contention the court cites Lowell on Bankruptcy, Section 54, in which it is stated: "A creditor who has petitioned for adjudication cannot afterwards receive payment of his debt, because the payment would be an unlawful preference." Under the present Bankruptcy Act, it is to be noted that a preference can be made as well after the filing of the petition as before. Section 60a. In addition this action of Mr. Wise comes pretty near amounting to a criminal offence under Section 29b, 4, inasmuch as he participated in this invalid receipt of money by a petitioning creditor. Section 1 (19).

12 As to the act of bankruptcy I find that the two payments made to Mr. Michael H. Curley on June 8, of \$159.23, and on August 31, of \$161.40, being made for antecedent debts, constituted preferences, and consequently acts of bankruptcy.

Finding, as I do therefore, that all the requisite allegations necessary to an adjudication have been proved, I would respectfully recommend that such action be taken by the Honorable District Judge.

And the evidence is herewith submitted and made a part of this report.

JAMES M. OLMSTEAD,
Referee in Bankruptcy.

Boston, March 11, 1909.

Adjudication of Bankruptcy.

May 13, 1909.

UNITED STATES OF AMERICA:

In the District Court of the United States for the District of Massachusetts.

In Bankruptcy. No. 14061.

In the Matter of J. W. CALNAN COMPANY, Bankrupt.

At Boston, in said district, on the thirteenth day of May, A. D. 1909, before the Honorable Frederic Dodge, Judge of said Court in Bankruptcy, the petition of Henry Doherty that J. W. Calnan Company be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said J. W. Calnan Company is hereby declared and adjudged bankrupt accordingly.

Witness, the Honorable Frederic Dodge, Judge of said court, and the seal thereof, at Boston, in said district, on the thirteenth day of May, A. D. 1909.

[SEAL.]

MARY E. PRENDERGAST,
Deputy Clerk.

13 *Opinion of the District Court on Question of Adjudication.*

May 13, 1909.

District Court of the United States, District of Massachusetts.

In Bankruptcy. No. 14061.

In the Matter of J. W. CALNAN COMPANY, Alleged Bankrupt.

DODGE, J.:

The alleged bankrupt is a Massachusetts corporation established in 1902. It does not now deny that it is insolvent, nor that its creditors are, as alleged in this petition by one creditor, less than 12 in number. It does deny the preferences charged as acts of bankruptcy, and denies that the petitioner's claim against it is provable or valid.

That the petitioning creditor, Henry A. Doherty, holds the two notes, overdue and unpaid, given by the alleged bankrupt, which are described in the petition, is not disputed. I agree with the referee that in the evidence relating to the exchange of accommodation notes between Doherty and the alleged bankrupt there is nothing sufficient to show that he has not a valid, provable claim for the amount appearing to be due him on the two notes referred to.

The referee has found that two payments made by the alleged bankrupt to Michael F. Curley in June and August, 1908, were preferences and acts of bankruptcy. One of these payments was of \$159.23 on June 8, 1908, the other of \$161.40 on August 31, 1908. The last date mentioned is subsequent to the filing of the petition, which was on August 29, 1908. Undoubtedly a transfer of property made by a bankrupt after a petition has been filed against him may be a preference, but I am unable to see how such a preference can be made the ground of adjudication under that petition, for the reason that it cannot have been a preference alleged under oath in the petition as an act of bankruptcy. The only question here, as

14 it seems to me, is as to the preference found to have been made June 8, 1908.

The payment then made to Curley was payment for goods sold by Curley in May, 1908. It was made by a check drawn on a bank account standing in the alleged bankrupt company's name and signed by it. The goods sold were bought for use in a business at one time and for several years carried on by the alleged bankrupt company at the same place of business where these goods were delivered and used. The respondent's claim is that since June, 1907, the business had belonged not to it but to John A. Sullivan, and that the goods sold in May, 1908, were bought not by it but by Sullivan, and were received, used and paid for not by it, but by him. And it appears that they were charged on Curley's books, and afterward billed, not to the respondent company but to J. W. Calnan & Company, the name under which it is calimed that Sullivan had been

carrying on the business since June, 1907. Sullivan's testimony was that the check given in payment for the goods was obtained by him from the respondent company, because he found it more convenient to use a check; that he had no bank account, and paid the respondent company for its check the amount thereof in money.

The petitioning creditor's evidence tends to show that there was never any real transfer of the business from the respondent company to Sullivan, but that the business carried on by him after June, 1907, under the name of J. W. Calnan & Company, was, like the business previously carried on at the same place under the name of J. W. Calnan Company, really the business of one John P. Wise, by whom Sullivan was employed and for whom he was acting. The referee has found that such was the fact, and after due consideration of the evidence before him, I find no sufficient reason for disagreeing with his conclusion. The payment in full, therefore, of the amount due Curley for the goods sold by him in May, the alleged bankrupt's insolvency at the time being undisputed and there being no evidence to control the presumption of an intent to prefer, was properly found to have constituted an act of bankruptcy.

As to the remaining act of bankruptcy charged, a fraudulent transfer, no finding has been made by the referee, and there was apparently no evidence.

15 I agree with the referee that, without the consent of the original petitioning creditor, the Mechanics Trust Company, which joined in the petition as an intervenor on November 25, 1908, is not to be allowed to withdraw its intervention, as it has undertaken to do in a paper filed January 15, 1909. This would certainly be true if the question of adjudication depended upon its joinder or non-joinder. As has been stated, this is a case wherein adjudication may be ordered upon the petition of one creditor only. Under the circumstances it does not seem to me necessary to consider further the alleged purchase of this intervenor's claim in Wise's interest. The purchase was by Wise's sister. Her purchase of the claim could not have had the result of defeating the act as the case stands, and the fact that Wise's arrest might have been ordered upon the execution taken out by this creditor interposes a further difficulty in the way of saying that the intent of her purchase was to defeat the act. The intervention by the Massachusetts Breweries Company, on January 1, 1909, is, on the facts found, the intervention of a creditor with a valid claim against the alleged bankrupt, and there has been no attempt to withdraw it.

Adjudication ordered.

In the District Court of the United States for the District of Massachusetts.

In Bankruptcy. No. —.

In the Matter of J. W. CALNAN COMPANY, Alleged Bankrupt.

Hearing on Question of Adjudication.

NOVEMBER 27, 1908.

Before Honorable James M. Olmstead, Referee in Bankruptcy.

Appearances:

John H. Blanchard, Esquire, for Petitioning Creditors.

H. M. Burton, Esquire, for Mechanics Trust Company, an Intervening Creditor.

Clarence F. Eldredge, Esquire, for Respondent.

16 Mr. BLANCHARD: I offer, may it please the court, in the first instance, on behalf of the intervening creditor, a certified copy of the judgment in favor of the Mechanics Trust Company, a corporation duly organized by law, against John T. Callahan and John P. Wise, both having their usual place of business in said Boston, and the J. W. Calnan Company, a corporation duly organized under the laws of the said Commonwealth, and having its usual place of business in said Boston; the date of the judgment being Sept. 25, 1908, the amount of damages being \$1024.40; costs, \$14.31; total, \$1038.71. That is the certified copy of the judgment.

The REFEREE: Are you going to object to this?

Mr. ELDRIDGE: I don't know that I object to the certificate, but I want to call the court's attention, and ask the court to rule that this being a judgment subsequent to the filing of this petition here, it appears to be a debt created since the filing of this petition.

The REFEREE: There is nothing in that. That has all been settled by the Supreme Court of the United States in the case of Boynton & Ball. That is not a ground of objection.

The REFEREE: When was the writ brought?

Mr. BURTON: I think the writ was brought about the middle or latter part of August.

The REFEREE: Latter part of August.

Mr. BURTON: Yes; I am quite sure it was prior to that, because I remember of having it marked: it was pending for several weeks, and I had it marked for trial the first week the municipal court came in, which was in September. The claim, if your Honor please, is on notes long overdue.

The REFEREE: Do you want Mr. Burton to take the stand?

Mr. ELDRIDGE: I want it as a matter of evidence or record, that is all, if it is a fact, which I don't know.

Mr. ELDRIDGE: Who signed by?

Mr. BURTON: Signed by John T. Callahan, endorsed by J. W.

Calnan Company and John P. Wise. That was a note for \$500. The other note on which the action was brought was one that came due—I haven't the date of it here, but it came due on June 1, 1908, signed by John T. Callahan, for \$500, endorsed J. W. Calnan Company, and John P. Wise. That is from a memorandum that I have. I have copies of the notes in my declaration. Yes, I am right; there are the two notes (producing notes). Notes dated Nov. 15, 1907, signed by John T. Callahan, for \$500, on six months' time, endorsement, J. W. Calnan Co., John P. Wise, Treas., John P. Wise. Note dated Feb. 1, 1908, for \$500, signed by John T. Callahan, endorsed J. W. Calnan Co., John P. Wise, Treas., J. P. Wise & Co., John P. Wise. My associate says the writs in this case was brought prior to Aug. 29.

17 The REFEREE: Judgment based on a writ brought four days prior to the filing of the petition must be founded on a debt in existence.

Mr. BLANCHARD: I offer, may it please the court, the note claimed in the petition here. Do you object to it? You have not denied any signature to it, so I take it, it is prima facie evidence.

Mr. ELDRIDGE: I prefer he put his client on; that is, he has his client here; let him prove it.

Mr. BLANCHARD: I suppose he would have a right to call him; he is here.

The REFEREE: He may like the right to cross-examine him.

JOHN T. CALLAHAN (sworn).

Direct examination:

(By Mr. BLANCHARD:)

Q. 1. What is your full name?

A. John T. Callahan.

Q. 2. Your business?

A. Bookkeeper for M. Doherty & Company.

Q. 3. How long have you been in their employ?

A. About 20 years.

Q. 4. Have you the ledger account of the J. W. Calnan Company?

A. Yes, sir.

Q. 5. Will you turn to it, please, having particular reference to a note dated Nov. 23, 1907?

A. He didn't send me the index with the ledger, so I have to look through it. What was the date of the note?

Q. 6. Note dated Nov. 23, 1907.

A. It was what?

Q. 7. Will you tell me the balance that appeared on your book as being due for merchandise on that date?

A. \$373.33.

Mr. ELDRIDGE: You asked him to give the amount due for merchandise to J. W. Calnan Company?

Mr. BLANCHARD: That is what I asked.

Mr. ELDREDGE: I took the precaution to look over this book. It is not against J. W. Calnan Company. It is J. W. Calnan & Company on here.

A. But they were always the same.

Mr. ELDREDGE: I ask that to be struck out.

Q. 8. Do you know any person other than the J. W. Calnan Company?

A. No.

18 Mr. ELDREDGE: I object to that question. J. W. Calnan & Company is a firm and J. W. Calnan Company is a corporation.

The REFEREE: Do you want him to go into the history of that? It very often happens that corporations are merged into partnerships, and they carry on the same business.

Mr. ELDREDGE: That is not in existence.

Q. 9. I don't care to go into that. I asked what was the amount that was due on Nov. 23, 1907, from the J. W. Calnan Company or J. W. Calnan & Company so far as it appears by your book?

Mr. ELDREDGE: I object. How much was due?

Mr. BLANCHARD: Then I insist on proceeding technically.

The REFEREE: Perhaps he can state what he knows, leaving out the book altogether.

Mr. BLANCHARD: I think, perhaps, I had better establish it now according to the rules of evidence, and let my brother examine himself. It seems to me I am entitled to establish my notes the other way.

The REFEREE: This is a proceeding against the corporation. If this is not a corporation book, Mr. Eldredge has a perfect right to object if he wants to.

Mr. BLANCHARD: I am not saying that now. I simply say I now will offer the notes, and, as the signature of the corporation to the note is not denied, it seems to me they are admissible.

The REFEREE: No doubt about that.

Mr. BLANCHARD: I now offer the notes and leave the examination to Mr. Eldredge.

Cross-examination:

(By Mr. ELDREDGE:)

X Q. 10. Mr. Callahan, how long have you been employed by M. Doherty & Company?

A. Twenty years.

X Q. 11. And M. Doherty is Henry Doherty, doing business under that name?

A. Yes, sir.

X Q. 12. And you are a clerk there?

A. Yes, sir.

X Q. 13. Now, have you the books of M. Doherty & Company there?

A. Ledger; yes, sir.

X Q. 14. And does this—before I come to that—do you know Mr. John A. Sullivan, don't you?

A. Yes, sir.

X Q. 15. And you know you have been to their place of business?

A. Yes, sir.

19 X Q. 16. And that business is conducted under the name of J. W. Calnan & Company?

A. I don't know that.

X Q. 17. You don't know that?

A. No.

X Q. 18. Did you ever look to see who was licensees?

A. No, sir.

X Q. 19. They run a liquor business?

A. Yes, sir.

X Q. 20. And you have seen Mr. John A. Sullivan there?

A. Yes, sir.

X Q. 21. And have sold that licensed concern goods, haven't you?

A. Licensed—sold J. W. Calnan Company.

X Q. 22. You have sold J. W. Calnan Company?

A. Yes, sir.

X Q. 23. Who did you charge it to—where is the account of J. W. Calnan Company on that book?

A. If you will let me explain a little bit.

The REFEREE: No, he will not.

X Q. 24. Where is the account of J. W. Calnan Company?

A. The bookkeeper has it J. W. Calnan & Company which is the original concern.

X Q. 25. That is, J. W. Calnan & Company?

A. Yes, sir.

X Q. 26. And did you have any other ledger account of J. W. Calnan & Company, other than this entered on page three?

A. Wait a minute; it is carried along here—

X Q. 27. No—

A. No other book except this one, but this is not the whole account there. It goes along.

(By the REFEREE:)

X Q. 27½. You have asked him if there is any other. Give him a chance to find it.

A. That is the only one there was. When the account is transferred—when we opened our books—the young man wrote it there as it should be. This account has been running for 20 years that way, 30 years, a matter of habit of carrying it along J. W. Calnan & Company.

X Q. 28. Now, what were these notes here that have been offered given in payment for?

A. Merchandise.

X Q. 29. Merchandise; and where it is charged upon this book?

A. Well, which note do you mean?

X Q. 30. These two notes, \$340 and \$373?

A. Three seventy-three was for goods they bought in October, 1907.

20 X Q. 31. Charged J. W. Calnan & Company?

A. Charged to J. W. Calnan Company.

X Q. 32. Will you show where they are charged to J. W. Calnan Company?

A. That, I say, was the old name on that book, carried along. It was never bothered to be changed—

X Q. 33. You knew J. W. Calnan & Company was a licensed Company?

A. I knew it was John P. Wise.

X Q. 34. You knew J. W. Calnan Company was not licensed?

A. Not as a corporation.

X Q. 35. And you knew, didn't you, that John A. Sullivan and John B. Sullivan were licensed as J. W. Calnan & Company?

A. I am not sure I knew it at that time.

X Q. 36. You knew it at some time, didn't you?

A. I am not sure now. I have not looked it up. It is hearsay.

X Q. 37. Have you the items that comprise the \$340 and \$373?

A. Have I what, sir?

X Q. 38. The items of these sales?

A. I haven't the sales book here. I have the items charged and posted from the sales book to the ledger.

X Q. 39. Well, of course, that was not one sale, was it, \$373?

A. Three seventy-three was the sales for October; what we called the October bill.

X Q. 40. The October bill. Now, what is the other for?

A. It was what—that \$340.53?

X Q. 41. \$340.53?

A. That was the November bill, five sales.

X Q. 42. And it is charged on your book to J. W. Calnan & Company?

A. If you say so, yes, according to that there.

X Q. 43. Suppose you look at those; are those the bills issued from M. Doherty & Company (handing witness bills)?

A. Yes, sir.

X Q. 44. And those were made out to J. W. Calnan & Company?

A. Copied right along from that.

X Q. 45. Made out?

A. Yes, sir.

X Q. 46. You are the bookkeeper?

A. I didn't make those out.

X Q. 47. You are the bookkeeper?

A. I am one.

X Q. 48. Who made out the bills?

A. Mr. Forrester, my assistant.

21 X Q. 49. Who wrote here "charged to J. W. Calnan & Company"?

A. Yes, sir.

X Q. 50. Who made the various entries?

A. Mr. Forrester.

X Q. 51. Now, isn't it true that the October bill, so called, is made up of items beginning Oct. 1 and running through the month?

A. Yes, sir.

X Q. 52. And those bills—that bill dated Nov. 1, 1907—showed the various sales, do they not?

A. Yes, sir.

X Q. 53. And these were sales of liquor?

A. Yes, sir.

X Q. 54. M. Doherty & Company are liquor dealers at the corner of Kneeland Street and Atlantic Avenue in this city?

A. Yes, sir.

X Q. 55. And this bill—those goods were shipped to J. W. Calnan & Company, 321 Tremont Street?

A. Yes, sir.

X Q. 56. And the bill dated Dec. 1, 1907 made out to J. W. Calnan & Company, and embraces items that were sold from Nov. 2 to Nov. 27?

A. Yes, sir.

X Q. 57. And those two notes were received from Mr. Wise, were they not?

A. Probably mailed to us. I might have received them—I might have got them myself.

X Q. 58. Whose handwriting—

A. I might have got those notes, or they might have been mailed. I might have mailed them the receipt; I don't remember which.

X Q. 59. You say you knew that J. W. Calnan Company was not licensed to sell liquor?

A. Well, they were running that store under somebody else—

X Q. 60. Just answer my question. You knew—

A. I knew as a corporation they never had a license.

X Q. 61. Did you know that the J. W. Calnan Company was not licensed to sell liquor?

A. As a corporation they were not. The commissioners objected to that.

X Q. 62. You knew that they were doing a retail business?

A. Yes, sir.

X Q. 63. And you knew that Mr. Sullivan was there, didn't you?

A. Yes, sir; bartender.

X Q. 64. Bartender?

A. Yes, sir.

X Q. 65. You knew that he was the licensee, didn't you?

A. Well, I am not so sure I knew it at that time.

22 X Q. 66. You knew it at some time, didn't you?

A. Heard he was. I didn't see any record.

X Q. 67. You saw the licenses on the wall?

A. I never stopped to read it. I see it. I see lots of licenses on walls. I don't stop to read them.

X Q. 68. You were one of the original incorporators of the J. W. Calnan Company?

Mr. BLANCHARD: If your Honor deems this material?

X Q. 69. You were one of the original incorporators of J. W. Calnan Company?

A. I don't remember whether I was or not. I don't know. I might have been, as a stockholder.

X Q. 70. You were one of the stockholders?

A. Yes.

X Q. 71. You knew they were not licensed to sell liquors?

A. Not licensed, no; we applied but the commissioners objected; said somebody else must apply for the license.

X Q. 72. You knew for some time Mr. Wise run the business?

A. Always run to my knowledge.

X Q. 73. At some time you knew Mr. Wise run it?

A. Yes, sir.

X Q. 74. You knew some time in 1907 he sold out?

A. No.

X Q. 75. You never took the pains to look it up?

A. No; he was still doing business.

Mr. ELDRIDGE: I ask to have that stricked out.

The REFEREE: It seems to me entirely responsive to your question. He was doing business.

X Q. 76. Did you and Mr. Wise have note transactions between you?

A. Yes, sir.

X Q. 77. You gave him notes?

A. Yes, sir.

Mr. BLANCHARD: You mean him individually?

Mr. ELDRIDGE: Yes.

Mr. BLANCHARD: I don't think that can be material.

The REFEREE: Bearing on the relations between the parties. He may make it material later. I am going to give him reasonable latitude in cross examination.

Mr. ELDRIDGE: I will endeavor to confine myself to what I think is material.

X Q. 78. He gave you notes, did he not?

A. Myself personally?

X Q. 79. Yes.

A. I don't think so.

23 X Q. 80. Did you give him notes?

A. Yes, sir.

X Q. 81. The firm of M. Doherty & Company gave him notes?

A. Yes, sir.

X Q. 82. Gave the J. W. Calnan Company notes, didn't it?

A. Yes, sir.

X Q. 83. And in turn, the J. W. Calnan Company gave notes to M. Doherty & Company?

A. At different times, yes.

X Q. 84. And those notes were discounted by you, were they?

A. Yes, sir.

X Q. 85. You had a bank account where?

A. United States Trust Company.

X Q. 86. Where else?

A. I think we discounted some at the Mechanics; I am not sure of that.

X Q. 87. Mechanics Trust Company. You knew Mr. Wise individually had an account at the Mechanics Trust Company, didn't you?

A. Yes, sir.

X Q. 88. And you think that—when you say “we discounted,” who do you mean, you or M. Doherty & Company?

A. M. Doherty & Company.

X Q. 89. And the notes were signed J. W. Calnan Co.?

A. Which notes are you talking about? The notes we got from the J. W. Calnan Company were signed J. W. Calnan Co.

X Q. 90. You knew there were some notes signed by M. Doherty & Company given to the J. W. Calnan Company?

A. Yes, sir.

X Q. 91. How long have these notes—different note transactions—been going on?

A. Well, I could not remember that.

X Q. 92. Several years?

A. Yes.

X Q. 93. Some notes were signed by Mr. Forrester, another clerk in Mr. Doherty's office?

A. Yes.

X Q. 94. Some signed M. Doherty & Co. John T. Callahan and Forrester?

A. Yes, sir.

X Q. 95. What is his name?

A. Joseph J. Forrester.

X Q. 96. And Mr. Wise has given you notes, or M. Doherty notes signed either J. P. Wise, or John P. Wise & Co., or J. W. Calnan Co.?

A. Yes, sir.

24 Mr. BLANCHARD: There are three or four questions all involved in that one.

A. You say, he gave me or M. Doherty & Company. There are two questions.

X Q. 97. Do you mean that he gave those notes to M. Doherty & Company or to you?

A. He gave them to M. Doherty & Company. None to me.

X Q. 98. But notes were issued signed by you and endorsed by M. Doherty & Company?

A. Might have been; yes.

X Q. 99. Given to whom?

A. Given to Mr. Wise. No, I don't think M. Doherty & Company endorsed notes signed by me.

X Q. 100. What were the notes signed by M. Doherty & Company?

A. Accommodation notes.

X Q. 101. Were the other notes signed by J. P. Wise & Company—what were those given for?

A. Some accommodation. We always marked them on our books merchandise, or whatever they were given for. Notes I gave to Mr. Wise were accommodation given by me to him so that he could raise money on them at the bank to do business with them.

X Q. 102. What bank took them?

A. Mechanics Bank.

X Q. 103. And there were some notes in the bank that were signed by—in the Mechanics Trust Company signed by John T. Callahan, were there not?

A. Yes, sir. I think there are two there now.

X Q. 104. Those notes had been renewed for a long time?

A. Yes, sir.

X Q. 105. Those notes were originally given on which M. Doherty & Company received the money?

A. No, sir.

X Q. 106. Have you any record on that book, or any book, showing the note transactions between M. Doherty & Company and Mr. Wise, or the J. W. Calnan Company?

A. Yes, sir, on my notebook.

X Q. 107. I said upon that book?

A. That is a ledger for merchandise, nothing to do with notes given for accommodation.

X Q. 108. You kept no record on that?

A. No; not on that. This was a business transaction. The other was an accommodation to a friend.

X Q. 109. Accommodation both ways, I understood you to say?

A. How both ways?

25 X Q. 110. Both for M. Doherty & Company, and J. W. Calnan Company?

A. Those are on the proper books, notebook.

X Q. 111. You have no book which simply refers to the notes?

A. I enter all notes received and all notes given us, and tell what they are for in the notebook.

X Q. 112. Do you enter notes signed by you individually?

A. No, sir; I didn't make an entry of that at all. That had nothing to do with the firm. I simply accommodated him as a friend, a man doing business with him.

Mr. ELDREDGE: I think that is all.

Redirect examination.

(By Mr. BLANCHARD:)

Q. 113. Were those two notes given for the indebtedness charged there to J. W. Calnan & Company on those respective dates?

A. Yes, sir. Payment of these bills Mr. Eldredge has.

Q. 114. Have you your notebook there?

A. Yes, sir.

Mr. BLANCHARD: I shall offer that, may it please the court.

The REFEREE: That may be referred.

[Statement of Nov. 1, 1907, marked "Exhibit 1." Statement of Dec. 1, 1907, marked "Exhibit 2."]

Q. 115. Do you know whether or not the J. W. Calnan Company owned the store where the license stands in the name of J. W. Calnan & Company?

Mr. ELDREDGE: Wait a moment. How can he know?

Mr. BLANCHARD: Well, if he was a stockholder in the corporation as he said, and you brought out, he probably knows.

The REFEREE: The question is perfectly proper, and you may answer.

Mr. ELDREDGE: I want to take an exception to this question.

The REFEREE: I will rule the question may be put. Put it again.
[Question read by stenographer.]

A. The corporation owned the store.

Q. 116. And whether or not during the time you were a stockholder and officer, the corporation received the proceeds?

A. Yes, sir, owned the store at that time.

Q. 117. And whether or not they paid the bills for merchandise which went in there at that time?

A. Yes, sir.

26 Recross-examination.

(By Mr. ELDREDGE:)

X Q. 118. When were you a stockholder,—up to what time?

A. I don't remember. That was the time he started it.

X Q. 119. That was way back in 1902?

A. The time the thing started.

X Q. 120. Don't you know it was in 1902?

A. No; I don't know anything about it. I don't remember the date.

X Q. 121. Was it in 1899?

A. I don't know.

X Q. 122. How long ago was it?

A. I can't tell you. It was the beginning of the time he changed the business from a firm to a stock company.

X Q. 123. That was way back in 1902, when this company was incorporated?

A. If that is the date. The record will tell.

X Q. 124. How long were you a stockholder of that corporation?

A. I don't know; I was not a stockholder to a big amount, one share, something like that.

X Q. 125. You were located down here on Kneeland Street.

A. Yes, sir.

X Q. 126. This place was on Tremont Street? 321?

A. Yes.

X Q. 127. Will you tell me how you say you know this corporation owned that business?

A. Because I know Mr. Wise owned the business, and he wanted to incorporate it, and it was incorporated. I had one share of stock, I never had any certificate, never had any stock; I was supposed to be a stockholder, but there was not any stockholder to it; it was

always Mr. Wise, always has been. He did the business and took the money.

X Q. 128. You don't know whether he took the money or not?

A. I don't know.

X Q. 129. Or for the last three years whether he has taken the money, or what the situation is?

A. He has three years.

X Q. 130. Take two years, you don't know he has taken the money?

A. Well, I will not argue that point.

X Q. 131. It is so, isn't it; you don't know for the last two years?

A. I don't know now for the last year, say.

X Q. 132. For the last two years?

A. I don't want so go on record as saying no.

27 X Q. 133. You will not undertake to say you know he has been taking the money or carrying on the business there for the last two years?

A. I will undertake to say he is carrying on the business.

X Q. 134. How do you know?

A. I have been doing business with him up to the last six months.

X Q. 135. You mean located there?

A. Doing business with them; taking orders.

X Q. 136. You sold goods?

A. Yes, sir.

X Q. 137. And given bills like this?

A. I didn't give that,

X Q. 138. You gave bills—had bills issued like this?

A. That bill was issued that way for 25 years; from the time that thing was started.

X Q. 139. Just answer my question; during the year 1907 don't you know that bills have been made out like those two bills?

A. I am not sure they are or not.

X Q. 140. Will you say—

A. Those two bills are all I know about.

X Q. 141. Will you say any bills have been made out differently?

A. I will not say anything about it. I didn't think it was material how it was made out.

X Q. 142. And you had knowledge as to what was going on in 1907 and 1908, but you have no present knowledge now of it?

A. Yes.

X Q. 143. What is it?

A. Going up there every Saturday night, seeing him taking orders, receiving money, taking these notes for the goods.

X Q. 144. Since along about the date of these bills you and Mr. Wise had a falling out?

A. Not that I know of.

X Q. 145. At that time, or about that time, you didn't know how the business was carried on, did you?

A. Well, that is a hard question to answer. That is a hard question to answer.

X Q. 146. All right; you have answered. That is all.

Mr. BLANCHARD: That is all.

Mr. BLANCHARD: I shall offer now, may it please the court, the certified copy of the last annual return made under the requirements of the statute by the J. W. Calnan Company to the Secretary of the Commonwealth.

28 Mr. ELDRIDGE: No objection. [Read.]

Mr. BLANCHARD: Now, if Mr. Wise is here, I am ready to proceed with the rest of my case, and establish the rest of my propositions. If not, I suppose I am entitled to the benefits accruing to me under the statute.

The REFEREE: If he is not here with books and papers, the burden is on him to prove the solvency of the company.

Mr. BLANCHARD: These people are not here with their books and papers. I don't know what value they would be, because I have not been able to get service of any paper upon the treasurer of this corporation. He keeps carefully away and evades it.

[Adjourned.]

Adjourned Hearing, January 1, 1909.

STANTON D. BULLOCK (sworn).

Direct examination.

(By Mr. BLANCHARD:)

Q. 1. What is your full name, Mr. Bullock?

A. Stanton D. Bullock.

Q. 2. What is your business?

A. Auditor of the First National Bank.

Q. 3. As auditor of the First National Bank, have you with you a transcript of the ledger account of J. W. Calnan Company?

A. Yes.

Q. 4. May I take it?

A. Yes, sir.

[Witness produces paper.]

Q. 5. Was this taken from the book, Mr. Bullock?

A. From the books, from April 1.

Q. 6. And whether or not that shows a true record of all the deposits and checks drawn as against the deposit of J. W. Calnan Company from April 1 down to July 31?

A. It does.

Mr. BLANCHARD: I am going to offer this, may it please the court.

Mr. ELDRIDGE: I object to it.

The REFEREE: On what ground?

Mr. ELDRIDGE: I object on the ground, while it may be true, as the witness has testified, this is a transcript from the books of the First National Bank, it does not tend to prove anything other than a set of figures, a credit between the First National Bank and J. W. Calnan Company. It has no tendency to prove any of the allegations in the petition.

29 The REFEREE: Do you object to that transcript being put in as evidence, on the ground that the books must be produced? Do you insist on the bank bringing in the books, or do you object to the books not being material?

Mr. ELDREDGE: I make no question between this and the books.

The REFEREE: I shall admit that statement, with the offer on the part of Mr. Blanchard to make that material.

[Exception saved. Statement marked "Exhibit 2."]

Q. 7. Where it appears as an entry under the debit column; what does that mean?

A. Checks drawn against it; checks which they had drawn out.

Q. 8. Checks which they have drawn against the account?

A. Yes.

Q. 9. And where it appears under the item credit; what is that?

A. Deposits they put in. The ledger shows no more than that.

Q. 10. That does not show the names of the parties to whom the checks were payable?

A. No; the ledger does not show that.

Q. 11. Is there any book in your possession which would?

A. No, sir.

Mr. BLANCHARD: That is all, sir.

Cross-examination.

(By Mr. ELDREDGE:)

X Q. 12. I notice, Mr. Bullock, where it says "dis." That means discount?

A. Discount.

X Q. 13. And "ck." means check?

A. I should say so. [Witness refers to statement.] I should say that was a check. "Tel." means telephone or telegram charged to the account.

Mr. ELDREDGE: That is all.

ARTHUR L. DROWN (sworn).

Direct examination.

(By Mr. BLANCHARD:)

Q. 1. What is your full name?

A. Arthur L. Drown.

Q. 2. What is your business, Mr. Drown?

A. Bookkeeper for Mr. M. H. Curley.

30 Q. 3. Have you the books of M. H. Curley there?

A. I have some of them.

Q. 4. Do you know the J. W. Calnan Company?

A. Yes, sir.

Q. 5. And do you know J. W. Calnan & Company?

A. Well, in matters of business.

Q. 6. Matters of business?

A. Yes.

Q. 7. Whether or not you have any record there showing sales to J. W. Calnan & Company?

A. Yes, sir.

Q. 8. Will you turn to that, please, and give me the dates?

Mr. ELDREDGE: As the court will recall, J. W. Calnan & Company is a firm consisting of Mr. John A. Sullivan——

The REFEREE: That was the firm that was in existence before the incorporation?

Mr. BLANCHARD: No; the firm in existence subsequent to that time. The license stands in the name of these two as copartners.

The REFEREE: This proceeding is against the corporation?

Mr. BLANCHARD: Your Honor will understand there are two allegations; one of concealment, the other preference, and I expect to show by this witness, although the goods were ordered in the name of J. W. Calnan & Company, they were paid for by the check of the corporation.

Q. 9. Now, Mr. Drown.

A. May 8, July 2, Sept. 24, and Dec. 24.

Q. 10. And the amounts in each instance?

Mr. ELDREDGE: What year is this?

A. 1908.

Q. 11. Give me the first two items, for instance?

A. May 8.

Q. 12. How much is that, please?

Mr. ELDREDGE: Wait a moment.

A. \$159.23.

Q. 13. Was that paid for, Mr. Drown?

A. Yes, sir.

Q. 14. Have you anything by which you can help us to determine who paid that, and how it was paid? [Witness refers to book.]

A. Paid on June 8——

Mr. ELDREDGE: Wait a moment. I object to his reading from his book. If he knows is one thing.

Q. 15. In whose handwriting is that?

A. Mine.

31 Q. 16. And you know the correctness of that entry at the time you made it?

A. Certainly.

Q. 17. Now, refreshing your recollection by that entry, will you tell me how that bill was paid?

A. Paid by the check of J. W. Calnan Company, Incorporated.

Q. 18. Now, can you give me any other information as to how the check was signed?

A. J. W. Calnan Co. Inc., John P. Wise, Trea.

Q. 19. Now, the next item of charge there,—when?

A. July 2.

Q. 20. And how much is that, please?

A. \$161.40.

Q. 21. Was that paid for?

A. Yes, sir.

Q. 22. How was that paid?

A. Paid on Aug. 31, check of J. W. Calnan Company, Incorporated, signed by John P. Wise, treasurer.

Q. 23. What is the next?

A. The next is Sept. 24, a bill of \$159.

Mr. BLANCHARD: That would be subsequent to the date of filing this petition.

Mr. ELDREDGE: The last, too, paid Aug. 31; that is subsequent.

Mr. BLANCHARD: That was for a bill sold prior to that time.

The REFEREE: What is the date of filing the petition?

Mr. ELDREDGE: Aug. 29.

Q. 24. Where were those goods delivered, Mr. Drown?

A. To their store.

Q. 25. What store, please?

A. 321 Tremont Street.

Q. 26. And was that the store of J. W. Calnan Company, so far as you understand it?

A. Yes.

Q. 27. Did you have any talk with Mr. Wise at any time about the delivery of these goods?

A. No; he had that original order——

Mr. ELDREDGE: Whether he had any talk.

Q. 28. Whether you had any talk?

A. No; I think not.

Q. 29. Did you ever hear any?

A. No.

Q. 30. Have you any correspondence with Mr. Wise relative to this account?

A. No, sir; not that I know of. I don't recollect any.

32 Q. 31. Did M. H. Curley & Company have any correspondence with Mr. Wise personally?

A. Personally, no, sir.

Q. 32. Did they with the J. W. Calnan Company?

A. Yes; sir.

Q. 33. Have you that correspondence?

A. Yes, sir. [Witness produces letters.] These are dated Nov. 6 and 11.

Q. 34. Of what year?

A. 1908.

[Witness hands counsel letters.]

Mr. BLANCHARD: I don't think these would be competent.

The REFEREE: You understand a preference may be after the filing of a petition as well as before.

Mr. ELDREDGE: There is no allegation. They have not amended their complaint.

The REFEREE: I don't think that is necessary. They allege a preference. If they allege preference, and it is a preference, then

they are entitled to the definition of a preference. There is no time limit to a preference after the filing of the petition.

Mr. ELDREDGE: I must take an exception to the admission of anything relative to any payments subsequent to the filing of this petition.

Q. 35. I will ask you what the next item was of goods sold?
A. Sept. 24.

Mr. ELDREDGE: And again I object, on the further ground these are goods sold to the concern of J. W. Calnan & Company.

Q. 36. And how was that paid, and when?

A. \$159.26. Do you mean the date it was paid?

Q. 37. Yes, please?

A. Nov. 16.

Q. 38. And how was it paid?

A. J. W. Calnan—that is the account I credited it to—Bay State Realty Company, signed John P. Wise, Treas.

Q. 39. I don't care about that. What is the next item?

A. That was the payment.

Q. 40. And the next?

A. The next bill was Dec. 24.

Q. 41. And that has not been paid as yet?

A. No.

Q. 42. Now, in the course of your relations with them—

Mr. ELDREDGE: Will you indicate who?

Q. 42 (continued). —have you billed any of those goods to the J. W. Calnan Company?

A. I did, after receiving check.

33 Q. 43. Whether or not after doing that, you received this letter (showing witness letter)?

A. Yes.

Q. 44. And have you a copy of your reply to that?

A. No; I have not here.

Q. 45. Can you conveniently get it, please, get the copy?

A. Yes, sir.

Q. 46. Will you please do so?

A. Yes, sir; it is at the office.

Q. 47. And whether or not you received that letter from them (handing witness letter)?

A. Yes, sir.

Q. 48. Now if you will bring in your copy.

Mr. BLANCHARD: I offer these two.

[Letter of Nov. 6, 1908, marked "Exhibit 3." Letter of Nov. 1, 1908, marked "Exhibit 4."]

Mr. ELDREDGE: These do not come from the defendant.

The REFEREE: His contention is it is the same concern.

Mr. BLANCHARD: Practically that.

The REFEREE: With that offer of proof, subject to exception, you may put them in.

Cross-examination:

By Mr. ELDREDGE:

X Q. 49. Mr. Drown, as I understand you, you sold goods to J. W. Calnan & Company?

A. Yes, sir.

X Q. 50. And bills so stand upon your books, J. W. Calnan & Company?

A. Yes, sir.

X Q. 51. And you knew who the licensee was, did you?

A. I didn't know anything about that part.

X Q. 52. You sold a bill in May, 1908, for \$159.43 to J. W. Calnan & Company?

A. Yes, sir.

X Q. 53. And it was paid June 8, 1908, by a check signed by J. W. Calnan Company? Is that right?

A. Yes, sir.

X Q. 54. You don't know where the funds came from, or whether it was a borrowed check? It was simply a check?

A. Yes.

X Q. 55. And on July 2, I understood you to say, you sold another bill to J. W. Calnan & Company? Is that right?

A. Yes, sir.

X Q. 56. And that was \$161.40?

A. Yes, sir.

34 X Q. 57. Is that right?

A. Yes, sir.

X Q. 58. And that was paid by a check dated Aug. 31, 1908?

A. I don't know the date of the check. That is the date we received it.

X Q. 59. That was signed J. W. Calnan Co.?

A. I believe so; yes, sir.

X Q. 60. Then a bill sold to J. W. Calnan & Company, Sept. 24, 1908, for \$159.26?

A. Yes, sir.

X Q. 61. And that was paid Nov. 16, 1908, by a check signed by the Bay State Realty Company?

A. Yes, sir.

X Q. 62. The invoices—did you send the invoices yourself?

A. I think so.

X Q. 63. And they had uniformly been made to J. W. Calnan & Company?

A. Well, there was an instance which these letters—

X Q. 64. There was an instance which these letters refer to when they were made to J. W. Calnan Company?

A. Yes, sir.

X Q. 65. But that was afterwards corrected and changed to J. W.

Calnan & Company as you had sold goods to them before; is that right?

A. Yes, sir.

X Q. 66. M. H. Curley & Company are wholesalers——

A. Just M. H. Curley.

X Q. 67. You said "& Co."?

A. Did I?

X Q. 68. Perhaps I was in error. He is a wholesaler?

A. Yes, sir.

X Q. 69. You understood J. W. Calnan & Company were retailers?

A. Yes, sir.

Mr. ELDREDGE: I think that is all.

Mr. BLANCHARD: I call your Honor's attention now to item under June 9, check \$159.43, J. W. Calnan Company, as being checked out from the bank.

JOHN A. SULLIVAN (sworn).

Direct examination.

By Mr. BLANCHARD:

Q. 1. What is your full name?

A. John A. Sullivan.

Q. 2. Your business?

A. Liquor dealer.

35 Q. 3. Where is your place of business?

A. 321 Tremont Street, Boston.

Q. 4. How long have you been there, Mr. Sullivan?

A. About a dozen years.

Q. 5. Do you mean that you are employed there, or you are proprietor?

A. Proprietor at present.

Q. 6. How long have you been proprietor?

A. Going on two years.

Q. 7. Do you mean that you are any more proprietor there than that the license stands in your name?

A. I am the sole proprietor.

Q. 8. Of the entire place?

A. Yes, sir.

Q. 9. Do you know M. H. Curley?

A. Not personally, no, sir.

Q. 10. Did you do business there alone or with a copartner?

A. Alone. I had another man on the license, but he has no financial interest in it.

Q. 11. By the way, before this license, or before you became proprietor of this place, what was your business?

A. Bartender or manager.

Q. 12. And you were bartender for the J. W. Calnan Company?

A. I have been; yes, sir.

Q. 13. And then, as I understand you, some two years ago, you became proprietor of it?

A. Yes, sir.

Q. 14. Did you do that by papers, written papers?

A. What do you mean by papers?

Q. 15. Bill of sale?

A. Yes, sir.

Q. 16. Have you got it now?

A. Yes, sir.

Q. 17. Will you produce it?

A. I haven't got it with me, no.

Q. 18. You were notified to produce it, were you not?

A. No.

Q. 19. In your summons?

A. I don't think so. If it was, I misunderstood it.

Mr. BLANCHARD: I notified Mr. Sullivan to produce all books and papers of every nature and description, showing dealings between the J. W. Calnan Company and J. W. Calnan & Company.

36 That, perhaps, might not be embraced in that bill of sale.
Mr. ELDRIDGE: He did not buy the place from the J. W. Calnan Company.

Q. 20. Didn't you, Mr. Sullivan,—didn't you buy the place from the J. W. Calnan Company?

A. You did not ask me the question, but I bought the place that was J. W. Calnan Company.

Q. 21. Who did you buy it from?

A. Mr. Wise.

Q. 22. Wasn't the place conducted by the J. W. Calnan Company at the time you purchased it?

A. I should suppose so. Of course I don't know the ins and outs of it at the time.

Q. 23. Do you mean that you then purchased it from Mr. Wise, individually?

A. Well, yes.

Q. 24. And you took your bill of sale from Mr. Wise, individually?

A. Yes, sir.

Q. 25. Although it was the place of the J. W. Calnan Company, as you understood it?

A. That was the name used there.

Q. 26. You understood it belonged to the corporation at that time, didn't you?

A. Well, I could not say just about that.

Q. 27. Did you, since the time when you acquired the property, buy any of the liquors that went in there?

A. I bought some.

Q. 28. Did you have any dealings during that time with M. Doherty & Company?

A. Yes, sir.

Q. 29. Did you have it personally?

A. Sometimes Mr. Callahan would come up——

Q. 30. Did you have dealings personally?

A. Well, sometimes I would send a postal, sometimes M. Callahan would be there and I would order.

Q. 31. Did you order any goods yourself, personally?

A. Yes, sir.

Q. 32. Did you ever pay for any?

A. No, sir.

Q. 33. Although you were the sole proprietor of the place, as I understand you, you never paid for any liquors furnished for the place after the time you began as proprietor?

A. Yes, sir.

Q. 34. Did you pay any to M. Doherty?

A. Yes, sir.

Q. 35. By checks of J. W. Calnan Company?

A. J. W. Calnan check.

37 Q. 36. How did you get J. W. Calnan Company's check?

A. Give the money for it, and got the check, out of my business.

Q. 37. You didn't know, did you, that all of the accounts of M. Doherty & Company were paid by note of the J. W. Calnan Company?

A. Well, I gave the money for the bills.

Q. 38. Did you know that?

A. No; I did not.

Q. 39. You don't know it now?

A. I didn't know they were paid by notes.

Q. 40. Did you have any bank deposit of J. W. Calnan & Company at any place?

A. No.

Q. 41. Did you individually make deposits of the proceeds from the store of J. W. Calnan Company at any place?

A. Yes, sir.

Q. 42. Where did you deposit them? Where did you make deposits?

A. First National Bank.

Q. 43. To whose credit?

A. Sometimes to the J. W. Calnan Company; sometimes to the Bay State Realty Company.

Q. 44. Did you do that daily?

A. No, sir.

Q. 45. How frequently did you do it?

A. Well, whenever I needed a check, for convenience I got the check and then deposited the money for the check to pay for the check.

Q. 46. Did the J. W. Calnan Company have any other place of business that you know anything about?

A. Well, some business up over the store, yes.

Q. 47. You are an officer in the J. W. Calnan Company, are you not?

A. Yes, sir.

Q. 48. What position do you occupy?

A. Supposed to be president.

Q. 49. What?

A. President.

Q. 50. Now, then, don't you know whether or not the J. W. Calnan Company had any business?

A. Well, not any that I know of.

Q. 51. What?

A. Not that I know of. They at one time had some Herman bitters and Podega cigars.

Q. 52. Have you, or do you keep, any books?

A. No, sir.

Q. 53. Showing the receipts or disbursements?

A. No, sir.

38 Q. 54. Have you anything by which you could show whether or not you deposited money, and the dates of the deposits or the amounts of them?

A. No, sir.

Q. 55. Didn't you deposit every day, excepting Sunday?

A. No, sir.

Q. 56. To the credit—did you give the money to Mr. Wise, the treasurer of the J. W. Calnan Company, every day?

A. No, sir, I never gave him anything except what I owed him for checks. I always keep my own money.

Q. 57. Always keep money?

A. It was my money, not his, why should I give it?

Q. 58. But you never kept any bank account?

A. No, sir.

Q. 59. Did the J. W. Calnan Company have any source of income from April 1 of this year down to July 1?

A. J. W. Calnan Company? I could not tell you, I am sure.

Q. 60. As president of that company, don't you know whether it had any source of income?

A. President,—that was figurehead.

Q. 61. As president of the company, don't you know whether they had any source of income?

A. No, sir; I never saw any.

Q. 62. You never saw any?

A. No, sir.

Q. 63. Where did you get the money from which to pay your license the first of May?

A. From the Bay State Realty Company.

Q. 64. That was John P. Wise, treasurer, as well?

A. Yes, sir.

Q. 65. Was that a corporation?

A. Sir?

Q. 66. Is that a corporation?

A. Bay State Realty?

Q. 67. Yes.

A. I don't know; I had nothing to do with it; I don't know, I am sure.

Q. 68. Did you get the money in bills or get a check?

A. I got a check.

Q. 69. In buying the goods from M. H. Curley, did you personally place any order for the goods?

A. Yes, sir.

Q. 70. With whom did you place it?

A. I generally telephoned—I don't know who answered the telephone.

39 Q. 71. By the way,—Mr. Wise, who was the treasurer of the J. W. Calnan Company, has been away from the city for quite some time, hasn't he?

A. Off and on.

Q. 72. Do you know where he is?

A. I do not.

Q. 73. How recently have you seen him?

A. Monday.

Q. 74. How recently have you given him any money?

A. Last month, about the middle of the month, I guess; twentieth or so.

Q. 75. Have you been depositing any to the credit of the J. W. Calnan Company during the last month?

A. Yes, sir.

Q. 76. In the First National Bank?

A. Yes, sir.

Q. 77. What?

A. Yes, sir.

Q. 78. Did you deposit any to the credit of the J. W. Calnan Company during the absence of Mr. Wise?

A. Yes, sir.

Q. 79. Do you know where the books of the J. W. Calnan Company are?

A. No, sir.

Q. 80. Have you ever seen them?

A. No, sir.

Q. 81. Do you know where Mr. Wise is now?

A. No, sir.

Q. 82. You did not get his address from him when you last saw him?

A. No, sir.

Q. 83. Who else are you in the habit of buying goods from?

A. Liquors, hard liquors?

Q. 84. Anything.

A. Rueter's, Houghton's, Rex Distilling Company.

Q. 85. Did you ever pay in person the Rex Distilling Company for any goods which were furnished to you?

A. Yes, sir.

Q. 86. When?

A. Well, about, I should say, about the twentieth of December, last time.

Q. 87. Was that the only time?

A. No, sir.

Q. 88. Do you recall any other time when you paid them money for goods?

A. I know I paid them in November, too.

Q. 89. When before that?

A. Well, most every month, paid them some money.

Q. 90. You paid in person?

A. Twice, I have; other times I sent checks.

Q. 91. When you sent checks, whose checks did you send?

A. J. W. Calnan Company, as a rule.

40 Q. 92. Did you, during the months of May, June and July, of this year, settle the account of the Rex Distilling Company by checks of J. W. Calnan Company?

A. Yes, sir.

Q. 93. And were those checks duly paid, as far as you know?

A. I paid for them before I got them.

Q. 94. I asked you whether the checks were duly paid?

A. I know I paid for the checks before I got them.

Q. 95. You didn't mean, Mr. Sullivan, did you, that in each instance you gave Mr. Wise money for a check when you got it?

A. Most always.

Q. 96. Do you mean that?

A. Yes, sir.

Q. 97. Did you carry any of the money of the concern about you at all?

A. Yes, sir.

Q. 98. What?

A. Sure. I have no bank account. I carry it.

Q. 99. Why?

A. Well, I don't know why. I had not money enough ahead to start a bank account that I see.

Q. 100. Well, you have daily receipts, don't you?

A. Yes, sir.

Q. 101. And they average about how much?

A. Oh, about \$65.

Q. 102. Don't they run more than that?

A. Some days.

Q. 103. Run anywhere from \$50 to \$150 or \$160?

A. No, sir.

Q. 104. Not Saturdays?

A. I haven't got up that far yet.

Q. 105. Do you mean that you carry around all of that money in your own pocket?

A. No, sir; I carry it home and leave it home, what surplus I have after paying bills. There has not been a great deal this past year to carry around.

Q. 106. Well, when Mr. Wise has been away, and you have been depositing money to his credit in the bank, how did that aid or assist you in the bank?

A. He sometimes had checks made out ahead for me, and I would deposit to meet them.

Q. 107. Do you mean that he left checks blank?

A. Yes, sir, signed.

Q. 108. So that you could fill them out—but no amount?

A. The amount was on there. I would know what time the bill would come due, the rent, liquor bill, ale bill, they would always be sent in advance.

41 Q. 109. Your ale man comes around weekly to collect in cash?

A. No; monthly.

Q. 110. Does he come around monthly to collect in cash?

A. No, sir. He has not been around last month.

Q. 111. Was he last month?

A. No, sir.

Q. 112. So that it is not any more difficult for you to pay in cash than to pay in check of the J. W. Calnan Company?

A. He didn't come last month.

Q. 113. Is that the reason you have for having checks of the J. W. Calnan Company, and depositing money for it?

A. Yes.

Q. 114. During the months of April, May and June of this year, was Mr. Wise in town every day?

A. April, May and June?

Q. 115. Yes.

A. Oh, I think so.

Q. 116. Did you either give him money daily for the purpose of making a deposit to the credit of the J. W. Calnan Company, or do you know of his making the deposit?

A. No, sir.

Q. 117. You don't know? Has Mr. Wise got an office in the store that you now occupy?

A. He is there frequently when he is in town.

Q. 118. Has he an office there?

A. The same office I use he uses when he needs to.

Q. 119. Did you write yourself that letter?

A. I had it typewritten.

Q. 120. Well, do you mean that you dictated it?

A. Why not?

Q. 121. There may be no reason, but I am asking you the question; did you dictate it?

A. I had it typewritten.

Q. 122. Did you?

A. Yes, sir.

Q. 123. Is that your language in that letter?

A. I don't know why I could not put it together.

Q. 124. What?

A. I don't know why I could not put it together?

Q. 125. Is that your language in that letter?

A. Well, I just answered you I thought I could put it together; why not?

Q. 126. Is that your language in that letter?

A. Yes, sir.

42 Q. 127. You want the court to infer that you dictated it—

The REFEREE: He stated he did.

Q. 128. Who did you dictate it to?

A. I had it written out by my daughter. I had it typewritten.

Q. 129. Will you say who you dictated it to?

A. My daughter.

Q. 130. Who typewrote the letter?

A. She had it done in town or her office.

Q. 131. What is the name?

A. Grace.

Q. 132. Where is she employed?

A. Dorchester; a bookkeeper.

Q. 133. By Whom?

A. Chemical Works, Freeport Street, Dorchester.

Q. 134. Is that the name of the concern?

A. Yes, sir.

Q. 135. Does she do typewriting there?

A. Yes, sir.

Q. 136. Do you know Mr. Callahan here?

A. Yes, sir.

Q. 137. Have you seen him at the store to make collections for goods which were furnished to that store?

A. I have seen him there quite frequently.

Q. 138. Have you seen him there for the purpose of making collections?

A. Yes, sir.

Q. 139. Have you paid him yourself?

A. No, sir.

Q. 140. Have you referred him to John P. Wise for the payment of his accounts?

A. He always went to him.

Q. 141. Have you referred him?

A. No, sir; I never referred to him; without any referring at all.

Q. 142. Haven't you in various instances referred him to the "boss," as you termed him?

A. That is what we called him when I worked for him.

Q. 143. Haven't you, in recent years and months, referred him to the boss for payment?

A. No, sir; I haven't seen him in recent months.

Q. 144. Haven't you, for the past bills that you received from M. Doherty & Company, referred him to Wise, calling Wise "boss," for payment of the accounts?

A. No, sir; I don't think so.

Q. 145. Do you say that you did not?

A. I say that I did not.

43 Q. 146. Did you, at the time when they refused to sell you goods, or sell any more goods to the store, did you speak about it to Wise at all?

A. No, sir.

Q. 147. Did you go to see M. Doherty & Company to learn why they refused to sell more goods?

A. No, sir.

Q. 148. You had been trading with them for a great number of years?

A. Yes, sir.

Q. 149. So long as you had been in any way connected with the business, hadn't they?

A. Yes.

Q. 150. And yet when they refused to sell any more goods you didn't go to see them to find out the reason why?

A. No, sir; I did not.

Q. 151. You never paid them either in money or by your check, did you?

A. No, sir.

Q. 152. Every time that you made a payment, it was by note?

A. I made no payment to them.

Q. 153. Every time that a payment was made for goods furnished to that store, furnished by M. Doherty & Company, was by the note of J. W. Calnan Company, wasn't it?

A. I could not tell you, I am sure.

Q. 154. When did you cease trading with them?

A. Last, I should say, May, I think. I think it was in May.

Q. 155. Do you recognize the handwriting on that note (showing witness note)?

A. Yes; I should say I did.

Q. 156. Whose handwriting is it?

A. I should say it is Mr. Wise.

Q. 157. Wasn't that note given for goods furnished there to that store?

A. It looks so.

Q. 158. What?

A. It looks that way. What is it, March—May? Yes, I guess so. That looks like it.

Q. 159. This note dated Nov. 23, 1907, and due March 23, 1908, payable to the order of M. Doherty & Company, and signed "J. W. Calnan Co., J. P. Wise, Treas." At that time, as I understand it, you claim you were in possession of the property there under the bill of sale?

A. Yes, sir.

Q. 160. Is that in Mr. Wise's handwriting?

A. I should say so; yes, sir.

Q. 161. Was that for goods which were furnished to the store?

A. Supposed to be.

44 Q. 162. What?

A. I don't know, I am sure, what it was given for.

Q. 163. Have you any doubt about it?

A. No; I have not.

Q. 164. Goods which were furnished to the store? (And this is dated Dec. 20, \$340, six months after date, signed by J. W. Calnan Company, John P. Wise, Treasurer. Whose handwriting (showing witness note)?

A. It looks the same. That looks similar to the others.

Q. 165. Wasn't that for goods furnished to the store?

A. I could not tell you.

Q. 166. Have you any doubt it was?

A. I have no reason to say either way.

Q. 167. Wasn't that the average monthly bill of the store?

A. I should say something very near.

Mr. BLANCHARD: This is dated Feb. 24, 1908, your Honor, due six months after date, signed "J. W. Calnan Co."

[Note of Nov. 23, marked "Exhibit 5." Note of Dec. 20, 1907, marked "Exhibit 6." Note of Feb. 24, 1908, marked "Exhibit 7."]

Q. 168. I call your attention to another note, dated Jan. 20, and ask you whether or not that is in Wise's handwriting.

A. I should say so.

Q. 169. Was that for goods furnished to that store?

A. I could not tell you.

Q. 170. Have you any doubt about it?

A. I could not tell you.

Q. 171. Have you any doubt about it?

A. I don't know.

Q. 172. Have you any doubt about it?

A. I don't know anything about it.

Q. 173. How do I know what they were given for?

Mr. BLANCHARD: I think there was testimony these were the exact amount of goods billed during the month for which the note was given. [Marked "Exhibit 8."]

Q. 174. I call your attention to the note of April 21; that is in his handwriting?

A. I should say so.

Q. 175. Have you any doubt that was for goods furnished to the store there?

A. I don't know anything about it. I am not going to express an opinion about something I don't know anything about. [Marked "Exhibit 9."]

45 Q. 176. As a matter of fact, wasn't that the way all goods shipped by M. Doherty & Company to that store were paid, by note of J. W. Calnan Company?

A. That was their preference to get them that way.

Q. 177. What?

A. I suppose they preferred to have them that way.

Q. 178. I am asking you, isn't that the fact that all the goods shipped to the store, which you now claim to be the proprietor of, was not paid for in that way, by notes signed J. W. Calnan Co.

A. I don't know.

Q. 179. You don't know anything about it?

A. I don't know whether they were all paid that way or not. Some of those look as though they were paid for goods.

Q. 180. At any rate you never individually never paid any of the bills?

A. To——

Q. 181. To M. Doherty & Company?

A. No, sir.

Q. 182. And you never sent any checks to pay any of the bills?

A. No.

Q. 183. And you never paid any of the bills for goods furnished to the store by your promissory note?

A. No.

The REFEREE: Personal promissory note?

A. No.

Q. 184. Or note of the firm?

A. No.

Q. 185. You say you are buying at the present time from Rueter & Company?

A. Yes, sir, ales; yes.

Q. 186. Do you pay Rueter & Company in cash?

A. No, sir.

Q. 187. Do you pay them by check?

A. Yes, sir.

Q. 188. And do you pay them by the check of the J. W. Calnan Company?

A. Most always.

Q. 189. Who else do you deal with beside Rueter?

A. Houghton—A. J. Houghton.

Q. 190. And I suppose you buy beer from *the* A. J. Houghton?

A. Yes, sir.

Q. 191. How do you pay them?

A. Checks.

Q. 192. Checks of the company?

A. Why checks, yes. Checks of the J. W. Calnan Company or the Bay State Realty Company; sometimes I paid both.

Q. 193. It is either one way or the other?

A. Yes.

Q. 194. You don't pay them in cash?

A. No.

46 Q. 195. Or don't pay them by your check?

A. No, sir; I don't have any.

Q. 196. Now, who else did you deal with?

A. Rex Distilling Company.

Q. 197. You have already spoken of them?

A. And M. H. Curley.

Q. 198. Are those all the people that you deal with?

A. That is all the liquor dealers.

Q. 199. Is that all the people you deal with?

A. No; I deal with the cigar man.

Q. 200. Who do you deal with in the cigar business?

A. Some United States Cigar Company. Some I got from New York.

Q. 201. Do you pay them by check or cash?

A. Sometimes cash, sometimes check.

Q. 202. And when it is paid by check, is it the check of the J. W. Calnan Company that pays the bill?

A. Yes, sir.

Q. 203. Is that true of the Rex Distilling Company?

A. When it is a check.

Q. 204. Do you ever pay them in cash?

A. Yes, sir.

Q. 205. What proportionate part is paid in cash, and what in check?

A. The last bill was in cash.

Q. 206. When was the last bill?

A. Sometime the middle of December.

Q. 207. At that time Mr. Wise was away from the city, wasn't he?

A. I don't know; I could not say.

Q. 208. What?

A. I could not say whether he was or not.

Q. 209. Had you seen him?

A. Well, I don't just remember when I saw him. I saw him sometime the middle of December, whether before or after he came that was paid I could not tell you.

Q. 210. Now, again, so as to make this matter clear, this place at one time was the place of John P. Wise, wasn't it? This liquor store?

A. Yes, sir.

Q. 211. And it remained the place of John P. Wise, who did business under the name of what? What name did he do business under there?

A. J. W. Calnan Company, I suppose.

Q. 212. J. W. Calnan & Company?

A. No company—I don't know.

47 Q. 213. When you were first in his employ he did business as J. W. Calnan & Company, didn't he?

A. I could not say that positively.

Q. 214. What?

A. I could not say for sure; it was J. W. Calnan—whether there was "Company" or "& Co.," I could not tell you.

Q. 215. When did you first know of the corporation being formed?

A. Well, I knew such a thing existed, but I didn't know anything about it—formed until two years ago.

Q. 216. When did you first know of its being formed?

A. Two years ago.

Q. 217. How long did the corporation do business there?

Mr. ELDRIDGE: I don't know as he says it ever did.

Q. 218. How long did the corporation do business there before you acquired it, as you claim?

A. I could not tell you.

Q. 219. You don't know?

A. No.

Q. 220. But up to the time you say you acquired this by purchase, you were a bartender?

A. Yes, sir.

Q. 221. Did you have any money at that time invested in savings banks or other banks?

A. No.

Q. 222. Did you pay anything at that time for the title to the property?

A. No, sir.

Q. 223. You did not?

A. No, sir.

Q. 224. It was simply transferred to you without any consideration?

A. No, I had a man take half a mortgage on it.

Q. 225. You had what?

A. I had a man put up a half of it for me. Mr. Rueter paid for half of it for me.

Q. 226. Paid half of it for you?

A. Yes.

Q. 227. What did he pay?

A. Paid \$9000.

Q. 228. Was that for half of it?

A. Yes.

Q. 229. What do you mean, he paid half of it, didn't you pay the whole of it?

A. Yes. You wanted to know where I got the money; I had none of my own.

Q. 230. Did you get any money other than that mortgage?

A. A second mortgage, two mortgages.

Q. 231. When was the first mortgage placed?

A. A year ago last June.

Q. 232. Were you not in possession, and wasn't the license issued in your name before that?

A. A year ago last June.

48 Q. 233. Yes; wasn't it issued in your name on the first day of May? A year ago last May?

A. No, sir; I think it was June, a year ago last June.

Q. 234. What name was the license in a year ago last May?

A. I think J. P. Wise.

Q. 235. Was that license in any way changed up until May of this year?

A. Changed; yes, sir. My name was put on to it.

Q. 236. When was your name put on to it?

A. A year ago last June.

Q. 237. Do you mean that the old license was surrendered at that time, and a new license taken out in your name?

A. Yes, sir.

The REFEREE: Was your name put on to that with Wise or alone?

A. Yes; Wise first.

Q. 238. And on the first day of May this year Wise's name was dropped off of it entirely, wasn't it?

A. Yes, sir; he is not on it at all.

Mr. ELDREDGE: It was dropped before then.

Q. 239. I am asking him the question. I suppose he knows something about his own business. That is the fact, is it not, Mr. Sullivan?

A. What is that?

Q. 240. On the first day of May of this year you made application in your own name?

A. Yes.

Q. 241. Now, did you ever pay Mr. Wise or the company, J. W. Calnan Company, any money on the first of May?

Mr. ELDREDGE: What do you mean by that?

Q. 242. At the time Mr. Wise ceased having his name on the license did you pay him any money, or did you pay the J. W. Calnan Company any money?

A. Neither of them.

Q. 243. Neither of them any money?

A. No.

Q. 244. Was there a lease of the premises up there, Mr. Sullivan?

A. I don't know whether it was a lease or not. I have none.

Q. 245. Did you pay your rental through J. W. Calnan Company?

A. Pay by check; I have.

Q. 246. Check of the J. W. Calnan Company?

A. Yes, sir.

Q. 247. Do you mail those checks yourself?

A. Most always; yes, sir.

49 Q. 248. Are you sure that you mailed them?

A. Yes, sir.

Q. 249. Doesn't Mr. Wise attend to that part of the business?

A. I don't think so. I don't remember of his doing so.

Q. 250. At the time that the mortgage was placed to Rueter, did you go and see Rueter yourself?

A. Yes, sir.

Q. 251. Where did you see him?

A. At his office.

Q. 252. Who did you see?

A. I see Mr. Rueter himself.

Q. 253. Was J. W. Calnan or the J. W. Calnan Company indebted to Mr. Rueter at that time in any sum of money?

A. No, sir.

Q. 254. Did you do any business with the Massachusetts Breweries at any time since you entered into possession of that place?

A. No, sir.

Q. 255. Never bought any goods from them at all?

A. No, sir; I might have cleaned up or otherwise half a month or so, but not any general business with them at all,—prolonged business. It might have been some little—

Mr. BLANCHARD: I think you can inquire.

Cross-examination.

(By Mr. ELDREDGE:)

X Q. 256. Your name is John A. Sullivan?

A. Yes, sir.

X Q. 257. Mr. Sullivan, how long did I understand you worked at this store?

A. About 12 years.

X Q. 258. Now, there was a man named J. W. Calnan at one time?

A. Yes, sir.

X Q. 259. J. W. Calnan?

A. Yes, sir.

X Q. 260. And that store has been known, has it not, as "J. W. Calnan's,"—by that name?

A. He opened it first, I believe.

X Q. 261. Kind of a trade name,—J. W. Calnan?

A. Always been that name.

X Q. 262. And the old sign still exists over the door,—“J. W. Calnan”?

A. Yes, sir.

X Q. 263. I understood that you worked there as a bartender, and later on as manager for Mr. Wise, is that so?

A. Yes, sir.

X Q. 264. As to whether the business was conducted under the name of J. W. Calnan & Company, or J. W. Calnan Company, or J. W. Calnan, do you know?

50 A. I could not say whether there was any Company or & Company in it at times or not. I know the sign “J. W. Calnan” has been up for years, and, of course, I knew Mr. Wise owned it.

X Q. 265. You knew Mr. Wise owned it?

A. Yes, sir.

[Examination of witness suspended.]

ARTHUR D. DROWN (resumed).

[Letter book produced. Letter of Nov. 10, 1908, read:]

“Messrs. J. W. Calnan & Co., 321 Tremont St., Boston, Mass.

“GENTLEMEN: I have your favor of the 6th, and contents noted. It would seem from my books that the checks received for various invoices have been the checks of J. W. Calnan Co., which would explain the last two lots being so billed. You will please find the invoice billed as requested.

“Yours truly,

“M. H. CURLEY,
Per D.”

(By Mr. BLANCHARD:)

X Q. 70. There is no other letter?

A. No.

JOHN A. SULLIVAN (resumed).

Cross-examination.

(By Mr. ELDREDGE:)

X Q. 266. The only one that you knew in connection with this business prior to your buying it out was Mr. John P. Wise?

A. Yes, sir.

X Q. 267. And did you deal with him concerning the buying out of these premises?

A. Yes, sir.

X Q. 268. And you finally bought it, did you?

A. Yes, sir.

X Q. 269. When?

A. I should say a year ago last June.

X Q. 270. Now, the bill of sale run from Mr. Wise to you, did it?

A. Yes, sir.

X Q. 271. And did you know that Mr. John P. Wise was licensee at that time?

A. Yes, sir.

X Q. 272. And did you know that he was conducting a business, so far as the license was concerned, under the name of J. P. Wise & Company? Did you see the license up there?

A. Yes, sir.

51 X Q. 273. And wasn't it J. P. Wise & Company, or John P. Wise & Company?

A. J. P. Wise.

X Q. 274. How long?

A. The last license that was issued that way.

X Q. 275. Do you recall what the license was prior to that time, before that time?

A. I believe John P. Wise and John F. Callahan.

X Q. 276. That is, this same Mr. Callahan was up there as John P. Wise and John T. Callahan?

A. I know he was there several times.

X Q. 277. This John T. Callahan now connected with M. Doherty & Company? He was on the license?

A. Yes, sir.

X Q. 278. John P. Wise and John T. Callahan, as J. W. Calnan & Co. or Company, which?

A. I don't know which.

X Q. 279. At all events, it ran to John P. Wise and John T. Callahan as J. W. Calnan & Company?

A. Yes, sir.

X Q. 280. That continued for how many months—years—prior to the license running to Mr. Wise?

A. I should say seven or eight, about that.

X Q. 281. Later on Mr. Callahan's name was off the license, and it stood in Mr. Wise's name?

A. I think his sister was on it at one time.

X Q. 282. As John P. Wise or J. P. Wise & Company?

A. Yes, sir.

X Q. 283. Now, sometime in 1907 about the first of June, 1907, did you have some talk with Rueter & Company about your buying the premises?

A. Yes, sir.

X Q. 284. And you saw young Mr. Rueter?

A. Yes, sir.

X Q. 285. Down here at 43 Tremont Street, regarding it?

A. The brewer. I saw the brewer at his office at the Houghton's Brewery; he was at the Houghton Brewery.

X Q. 286. Did you make your necessary arrangements with him?

A. Yes, sir.

X Q. 287. That was that you were going to buy the place?

A. Yes, sir.

X Q. 288. And that he was going to loan you some money?

A. Yes, sir.

X Q. 289. How much?

A. Nine thousand dollars.

52 X Q. 290. And what was the lending of the money for,—so that you could purchase the place?

A. Yes, sir.

X Q. 291. And did you thereupon—were you afterwards referred down to his brother's office?

A. Yes, sir.

X Q. 292. On Tremont Street?

A. Yes, sir.

X Q. 293. Tremont Street?

A. Yes, sir.

X Q. 284. Down where Mr. George W. Anderson, his counsel, was there?

A. Yes, sir.

X Q. 295. And did you go down there and perfect the necessary legal arrangements?

A. Yes, sir.

X Q. 296. And the bill of sale was given to you by Mr. John P. Wise?

A. Yes, sir.

X Q. 297. Of these premises.

Mr. BLANCHARD: You have the bill of sale.

X Q. 298. And whether or not it included all the property located there?

Mr. BLANCHARD: That I object to, unless the bill of sale is here. It is in his possession.

Mr. ELDRIDGE: He is your witness.

The REFEREE: I don't think you ought to ask that. You can produce it.

Mr. ELDRIDGE: Very well; I will withdraw it.

X Q. 299. Did you at that same time, after the execution of the bill of sale to you, give a mortgage to Rueter & Company?

A. Yes, sir.

X Q. 300. For how much?

A. Nine thousand dollars.

Mr. ELDRIDGE: I offer now a certified copy of that mortgage. I will ask you right here—what was the purchase price, \$18,000?

A. Eighteen thousand dollars. [Marked "Exhibit 10." Read.]

X Q. 301. Did you at the same time execute to Mr. John P. Wise a mortgage for \$9000?

A. Yes, sir.

X Q. 302. Subject to this one?

A. Yes, sir.

Mr. ELDREDGE: I offer that. [Marked "Exhibit 11."]

Mr. BLANCHARD: I don't know how this is competent. He says at the time this thing was done it was the property of the corporation.

The REFEREE: It seems to me it is a perfectly proper admission.

[Mortgage read.]

53 X Q. 303. Is Edward H. Ruby a gentlemen in Mr. Anderson's office?

A. Yes, sir.

X Q. 304. Now, did you know that that mortgage was subsequently assigned by Mr. Wise to the Bay State Realty Company?

A. Yes, sir.

Mr. ELDREDGE: I offer the assignment; taken from the city clerk's office. [Marked "Exhibit 12."]

X Q. 305. Whether or not from time to time you have paid some amounts to the Bay State Realty Company on account of this mortgage?

A. Yes, sir.

[Assignment read; recorded July 11, 1907.]

Q X. 306. Now, at that time, when you bought the premises from Mr. Wise, and at the time that you gave the mortgages, I understand you to say that the licenses that had theretofore before that time had existed were surrende-d and cancelled and a new license issued?

A. Yes, sir.

X Q. 307. And was that license issued—was it issued to you and Mr. Wise?

A. The first one; yes.

X Q. 308. At the first?

A. Yes.

X Q. 309. And do you know along a little later, during that year, that Mr. Wise withdrew from that license?

A. Yes, sir.

X Q. 310. During that year?

A. Yes, sir.

X Q. 311. And do you know when it was; whether it was the next month, or the month after, or just when it was?

A. I should say a couple of months after.

X Q. 312. He withdrew from the license?

A. Yes, sir, altogether.

X Q. 313. And in 1908, May 1, who did the license then run to?

A. Run to John A. Sullivan.

X Q. 314. And did you have some friend of yours?

A. John B. Sullivan.

X Q. 315. But as I understand you to testify he had no financial interest in it?

A. No; just protection.

Q. 316. Protection in case of death?

A. Yes, sir.

X Q. 317. And you have conducted the business there, Mr. Sullivan, since you bought it from Mr. Wise in June, 1907?

A. Yes, sir.

Q X. 318. Has any one paid any of the bills there other than yourself?

A. Not that I am aware of.

54 X Q. 319. And to whom did the proceeds of sales belong?

A. To myself.

X Q. 320. And do they belong—or has any other person any interest in them?

A. Since that time, June?

X Q. 321. 1907.

A. No, sir.

X Q. 322. Now, Mr. Sullivan, I understand that you don't keep any bank account?

A. No, sir.

X Q. 323. And haven't kept any bank account?

A. No, sir.

X Q. 324. And whenever you have obtained checks to send to various persons, why did you get checks rather than the money?

A. Well, I thought it would be more convenient to send a check than to send money, or to carry it; to send a check through the mail.

X Q. 325. Now, whenever you got a check from J. W. Calnan Company, I mean check signed by the J. W. Calnan Company, did you take the money that belonged to you and furnish it to that concern?

A. Always.

X Q. 326. For the check?

A. Yes, sir.

X Q. 327. And in place of it, in place of this money, you got a check, did you?

A. Yes, sir.

X Q. 328. And did you then mail the check to the various persons that have been referred to?

A. Yes, sir.

X Q. 329. Whether or not that is true in the M. H. Curley matter?

A. These checks that went to M. H. Curley the same way.

X Q. 330. Did you supply the money yourself from your own personal funds?

A. Yes, sir.

X Q. 331. Money that you had received from the store?

A. Yes, sir.

X Q. 332. And did it belong to you personally?

A. Belonged to me.

X Q. 333. And did you furnish it to Mr. Wise, and he in turn give his checks for it?

A. Yes, sir.

X Q. 334. And at times he has given you checks signed by the Bay State Realty Company, has he?

A. Yes, sir.

X Q. 335. And in those instances, did the funds which you furnished to Mr. Wise, and for which he gave you checks of the Bay State Realty Company, did those funds belong to you?

A. Yes, sir.

55 Q X. 336. And did the J. W. Calnan Company, I mean the corporation, have anything,—any interest in it?

A. None whatever.

X Q. 337. And did the J. W. Calnan Company, I mean the corporation, furnish any of the money or funds for which those checks went out?

A. No, sir.

X Q. 338. I understood you to say that you did—did I understand you to say that you borrowed the money from the Bay State Realty Company on the first of May?

A. Yes, sir.

X Q. 339. And have you paid them some money?

A. Yes, sir, some.

X Q. 340. On account?

A. Yes, sir.

X Q. 341. And whether or not the liquor business where money is borrowed it is usual to pay it back during the last six months of the year?

A. That is about as near as you can get at it.

X Q. 342. And I understand you to say you have paid some of the same money, or this same money, for which this check was given to you?

A. Yes, sir.

X Q. 343. That was borrowed, was it?

A. Yes, sir.

X Q. 344. And you did not furnish the money for that?

A. No, sir.

X Q. 345. You borrowed—

A. Borrowed the money and paid some of it back since.

X Q. 346. Now, do you know that Mr. Wise and Mr. Callahan was connected with M. Doherty & Company,—did you know in a general way that they had for many years many dealings together?

Mr. BLANCHARD: How can that be material? What material bearing has that upon this issue? Mr. Callahan testified there had been many note transactions between Mr. Wise and himself covering the period, as I expect to show, many years.

The REFEREE: Well, you may put it.

X Q. 347. Did you know that there had been dealings between them?

A. Yes, sir.

X Q. 348. Did you know what the extent of them was?

A. I didn't know the extent. I knew there had been considerable

dealings between them in regard to checks and notes and one thing and another.

56 X Q. 349. These bills that were sent to you for goods bought by you from M. Doherty & Company, did you pay Mr. Wise the money for those bills?

A. Always.

X Q. 350. You paid him the money?

A. Yes, sir.

X Q. 351. As to how he arranged it with M. Doherty & Company you did not know?

A. I don't know.

X Q. 352. And was any information given you as to why the money should be paid by you to Mr. Wise rather than to M. Doherty & Company?

A. I don't quite understand that.

X Q. 353. Perhaps I will put it this way: why did you give the money to Mr. Wise to pay those bills rather than direct to M. Doherty & Company?

A. Well, they never come to me for anything. They always used to go to them.

X Q. 354. Did you know of the fact they had various dealings with them?

A. I didn't know the extent of the dealings, but I knew they had some dealings with each other in regard to matters.

X Q. 355. And the money for those bills you say you gave to Mr. Wise?

A. Yes, sir.

X Q. 356. And what arrangements he made with M. Doherty & Company you don't know?

A. I don't know.

X Q. 357. Now, Mr. Sullivan, under what name did you continue to carry on the business?

A. Under J. W. Calnan & Company.

X Q. 358. And did you, all the time that you bought it from Mr. Wise down to the present, carry it on under the name of J. W. Calnan & Company?

A. Yes, sir.

X Q. 359. Did you buy your goods in that name?

A. Yes, sir.

X Q. 360. And have carried it on generally——

A. The same way; yes, sir.

X Q. 361. Under the same name?

A. Yes, sir.

X Q. 362. And have you changed any signs there at all, or left the signs as they were?

A. As they always were.

X Q. 363. Did you know of Mr. Wise having anything to do with the conduct or carrying on of your business there?

A. No, sir.

X Q. 364. Has he had anything to do with the carrying on or conduct of it since you bought it?

- 57 A. No, sir.
X Q. 365. Did you pay bills in cash as well as in checks?
A. Yes, sir.
X Q. 366. Now, I understood you to say that at one or more times when Mr. Wise was away he gave you checks, and before you used them, you furnished the money and deposited it in the bank so as to make the check good?
A. So as to meet a check.
X Q. 367. And those funds you so deposited in the bank were your funds?
A. Yes, sir.
X Q. 368. And were they solely for the purpose of paying for the check that had been given to you in advance?
A. Yes, sir.
X Q. 369. And for no other purpose?
A. No other purpose.
X Q. 370. Why didn't you open a bank account yourself?
A. I didn't have any money to open it with.
X Q. 371. Did you pay bills from time to time in cash as they came there?
A. Yes, sir.
X Q. 372. Some liquor bills?
A. Some liquor bills, cigar bills, tonic bills.
X Q. 373. Cigars, liquors, tonics, and different accounts?
A. Yes.
X Q. 374. And from time to time I understood you to say you would furnish the money to Mr. Wise and he give you a check?
A. Yes, sir.
X Q. 375. And you would send the check?
A. Send the checks.
X Q. 376. And sometimes Bay State Realty Company, and sometimes J. W. Calnan Company.
A. Yes, sir.
X Q. 377. Did the J. W. Calnan Company ever give you a check except you furnished the money?
A. Never.
X Q. 378. Did they ever pay any of your bills unless you had first paid them the money?
A. Never.
X Q. 379. And that was simply a matter of convenience, was it?
A. Convenience, yes, sir; convenience to myself.
X Q. 380. Was it given for any other purpose?
A. No other.

Mr. ELDRIDGE: I think that is all.

58 Redirect examination:

(By Mr. BLANCHARD:)

- Q. 381. Mr. Sullivan, at the time you made this purchase, you never notified any creditors that you purchased it, did you?
A. Any of whose creditors?

Q. 382. Any of the people with whom you were dealing?

A. Well, did you say purchase? I was not dealing with anyone.

Q. 383. You knew the people who were selling to the store?

A. Yes, sir.

Q. 384. You continued to buy from the same people?

A. Yes, sir.

Q. 385. You never notified them of any change?

A. I guess they knew it.

Q. 386. You never notified them of it?

A. Never.

Q. 387. Now, Mr. Wise had some trouble with his wife that you knew of?

A. I guess there was a little family trouble.

Q. 388. You knew that has been continued down to the present time?

A. I knew there was some trouble.

Q. 389. When did that trouble begin?

Mr. ELDREDGE: How is that material?

Mr. BLANCHARD: I am trying to show—

The REFEREE: He is trying to show this man is a dummy for him.

Mr. BLANCHARD: I expect to show, under the certificate of condition which they filed at the State House the time they did business, they put in the business as part of the assets of the corporation. I will endeavor to show that before I finish.

The REFEREE: With this offer of proof you may do so, subject to exception of counsel.

Mr. ELDREDGE: The offer of proof is one thing, but the question and the subject-matter of the question is another. About when Mr. Wise had some trouble with his wife.

The REFEREE: I suppose that is laying the foundation; showing the purpose of his concealing his tracks.

Mr. BLANCHARD: That is the purpose of it.

Q. 390. Now, tell me when you first learned that Mr. Wise was having trouble with his wife?

A. I could not tell you when it was first.

Q. 391. Can't you tell me when you first learned of it?

A. No; I could not.

59 Mr. ELDREDGE: All subject to my exception.

Q. 392. Don't you know it was about the time of this transfer to you?

A. No; I don't know; I think it was good deal later than that I first heard of it.

Q. 393. Are you clear as to it?

A. No; I am not clear as to when it happened.

Q. 394. So far as you know, J. W. Calnan Company had no other assets at the time they incorporated except this place of business?

Mr. ELDREDGE: I don't suppose he knows anything about it.

The REFEREE: I am going to give you considerable latitude in

the examination of him. Under the circumstances I think you are entitled to it.

Q. 395. Didn't you know, Mr. Sullivan, that at the time when the J. W. Calnan Company was incorporated there that the assets of the J. W. Calnan Company was this liquor store and the contents of it?

A. No, sir; I don't know anything about it.

Q. 396. Do you know anything about it at all?

A. Nothing about it at all.

Q. 397. Did you know—you pretend to say although you were working there you knew nothing whatever about it?

A. I knew nothing about it.

Q. 398. Do I understand that in May of this year the J. W. Calnan Company had no property of any kind or description?

A. I don't know what they had.

Q. 399. You were the president of it?

A. I know they had nothing to my knowledge.

Q. 400. Nothing to your knowledge?

A. Nothing to my knowledge.

Q. 401. You are clear as to that?

A. They might have had something that I didn't know about.

Q. 402. You signed this certificate of condition as president of that company (showing witness paper), didn't you?

A. I don't see my signature there.

Q. 403. Don't you see your name there at all, Mr. Sullivan?

A. Yes; I see my name there now.

Q. 404. Didn't you sign and swear to the certificate of condition on that day?

A. I think I might have if it is there.

60 Q. 405. What comprise the bills receivable that you swear the J. W. Calnan Company possessed in May, 1908.

The REFEREE: He wants you to look at this certificate of condition and see what the capital was made up of.

A. I am just as wise now as I was before. I don't understand what it was made up of.

Q. 406. You swore, didn't you, on that day, that the J. W. Calnan Company was possessed of cash and debts receivable to the extent of \$2000?

A. I might have, if it is on there.

Q. 407. How was it made up?

Mr. ELDREDGE: He already said he didn't know. He was only a nominal figurehead.

Mr. BLANCHARD: It does not seem to me suggestions of that kind at this stage are proper from counsel.

The REFEREE: I think the witness should be allowed to answer the question without any suggestion.

A. I don't know I am sure.

Q. 408. Where did you get the information from on which you based the oath that the J. W. Calnan Company on that day was possessed of cash and bills receivable to the extent of \$2000?

A. It would have been at the meeting.

Q. 409. Where did you get the information from?

A. I could not answer that.

Q. 410. Don't you know? Do you mean that you swore on that date the corporation, J. W. Calnan Company, was possessed of \$2000 cash and debts receivable without knowing anything about it?

A. I take the report—

Q. 411. Do you mean to say that you made oath—

The REFEREE: Give him a chance to answer the question.

A. I take the report of the treasurer.

Q. 412. I will repeat my question again. Do you mean to say that on the fourth day of May, 1908, you swore that the assets of the J. W. Calnan Company, consisting of cash and debts receivable amounting to \$2000, was sworn to without any knowledge on your part as to whether they did possess that?

A. I only took the report of the treasurer.

Q. 413. Can you tell me now how that was made up, sir?

A. No, sir.

61 Q. 414. Have you the report?

A. I don't know.

Q. 415. Did you make any investigation to see whether or not it was accurate or true?

A. No, sir.

Q. 416. You did not. Then you swore to it without knowing anything about it, except what he told you?

A. I took his word for it.

Q. 417. Is that it?

A. That is about the size of it.

Q. 418. Is that it?

A. That is it.

The REFEREE: Who was the treasurer?

Mr. BLANCHARD: John P. Wise. The man we have been trying to reach and cannot.

Q. 419. I call your attention to the item "good-will," as sworn to in that certificate of condition, \$3000, and ask you what the good will is therein referred to?

A. I don't know.

Q. 420. You don't know. Do you mean to say that you swore to that certificate and didn't know what the item of \$3000 under the heading "good-will" was?

A. I don't know what it means.

Q. 421. What?

A. I don't understand what it means.

Q. 422. Did you understand at the time?

A. Probably it was explained to me then; I might have then.

Q. 423. Don't you remember?

A. I don't remember now.

Q. 424. You don't remember anything about it?

A. No.

Q. 425. You do know as a matter of fact on the fourth of May, 1908, the J. W. Calnan Company had no good will, don't you?

A. I could not tell you.

Q. 426. What?

A. I could not tell you.

Q. 427. Don't you know that all of the assets of the J. W. Calnan Company were sold to you?

A. Well, if that is the way—

Q. 428. Well, don't you know that to be so?

A. Well, I know that the place was.

Q. 429. Isn't that your claim—all of the assets of the J. W. Calnan Company were sold to you?

A. Whether J. W. Calnan Company or & Company I don't know.

Q. 430. Didn't you know, as president of the company, of any interest that the J. W. Calnan Company had in any business on the fourth of May?

A. They might have had some business I didn't know.

62 Q. 431. Did you know at the time that you swore to that certificate of the J. W. Calnan Company having any other business, or any business to which there was a good will?

A. Oh, there was some business in regard to bitters and cigars that it was concerned in.

Q. 432. Do you mean that J. W. Calnan Company was doing business in bitters and cigars?

A. Tried to anyway.

Q. 433. Were they doing it on the fourth day of May, 1908?

A. That I could not tell you.

Q. 434. Were they doing it at the time when you swore to that certificate?

A. They were supposed to be in some sort of business like that then.

Q. 435. Don't you know whether they were or not?

A. I do not.

Q. 436. What?

A. I do not.

Q. 437. Then you swore that the good will of the J. W. Calnan Company in some business was worth \$3000 without knowing anything about it, did you?

A. Well, I must have taken the word of the treasurer for it, and supposed it was all right, if I did so.

Q. 438. But without making any investigation, or having any knowledge of your own, you swore to that, did you?

A. Well, it looks like that. I don't know; I would not say whether I did or did not.

Q. 439. I want you to say one way or the other?

A. Well, I don't know which to say.

The REFEREE: The witness doesn't deny it.

Q. 440. At any rate, then, as I understand you, that on the fourth of May, at the time that you signed that and made oath to

it, you did not know J. W. Calnan Company was engaged in any business that had a good will?

A. Why not be good will if they were engaged in the bitter and cigar business?

Q. 441. I am not asking you to argue it, but to answer the question.

A. I want to answer right and give an explanation.

Q. 442. If my question is not comprehensive let me know, and I will repeat it.

Mr. ELDREDGE: It seems to me that the witness fully answered the question.

63 Q. 443. At the time when you swore to that certificate of condition, did you know whether the J. W. Calnan Company had any business, the good will of which was worth the price that you put down there?

A. No.

Q. 444. When did you first learn that the notes which were being given for the goods furnished to you after you claim to have acquired possession of this store remained unpaid?

Mr. ELDREDGE: Say that again.

[Question read by stenographer.] Do you understand it, Mr. Sullivan? I will repeat it in different form if he does not understand it.

A. Repeat it again, please.

Q. 445. When did you first learn that the notes given to M. Doherty & Company for goods furnished to that store after you claim to have bought it were unpaid?

A. Not until this business, bankruptcy business, came up.

Q. 446. What?

A. Not until this proceeding in bankruptcy came up.

Q. 447. Didn't you know it before that?

A. No.

Q. 448. Hadn't Mr. Forrester been to your place repeatedly trying to collect these notes?

A. He never come to me on it.

Q. 449. Didn't you have conversation with him, in which you learned that notes had gone to protest?

A. No, only one note.

Q. 450. What?

A. Only one note.

Q. 451. Was that the first note that went to protest?

A. The first one I ever knew, and the only one.

Q. 452. Didn't he tell you at that time it was for goods furnished to the store?

A. I had no conversation with Mr. Forrester at all.

Q. 453. Did you with Mr. Callahan?

A. Yes, sir.

Q. 454. When was it that you had conversation with Mr. Callahan in reference to notes given for goods furnished to that store after you had acquired it?

A. I think, one around the first of May; about that; back there in April.

Q. 455. Then you did learn at some time either in April or May that M. Doherty & Company had furnished goods there since you acquired, or claimed to have acquired, that store, that the J. W. Calnan Company notes had been given for it, and the notes had gone to protest?

A. I remember one; that is all.

64 Q. 456. You remember one?

A. I did, because I went to see him about it.

Q. 457. See him?

A. I went to see Mr. Callahan first, and then to see Mr. Doherty.

Q. 458. When did you see them?

A. Along the last of April or the first of May.

Q. 459. Did you see Mr. Wise about it?

A. At that time?

Q. 460. Yes.

A. He was not here.

Q. 461. Have you seen him since then?

A. Yes.

Q. 462. Have you talked with him about that note?

A. Well, yes, I had a talk.

Q. 463. But I understand you to claim that you had paid Mr. Wise in cash for those goods.

A. Always gave him cash, and I supposed he paid them.

Q. 464. Did you say anything to Mr. Wise about having paid him in cash for those notes? For these notes which went to protest?

A. Not anything particular; no.

Q. 465. Did you say to him that the notes for which you had given him cash to pay for goods furnished by M. Doherty & Company to that store had gone to protest?

A. I did not.

Q. 466. Did you ever say anything about it?

A. I had some talk about it.

Q. 467. Did you ever say anything to him about returning to you the cash, or paying up M. Doherty & Company?

A. No; I have not.

Mr. BLANCHARD: You may *inquire*.

Recross-examination:

(By Mr. ELDRIDGE:)

X Q. 468. Mr. Sullivan, when you talked with Mr. Wise about this, did Mr. Wise tell you he had an offset against M. Doherty & Company; that they owed Calnan Company several notes, many notes?

A. Yes, sir.

X Q. 469. And they owed him thousands of dollars?

A. Yes, sir.

X Q. 470. And did he further tell you there had been a lot of note transactions between the J. W. Calnan Company and Dohertys?

A. Yes, sir.

65 Mr. BLANCHARD: He said on direct he didn't say anything.

A. I said I had talked, but you specified about those particular notes.

X Q. 471. And did he tell you—Mr. Wise tell you—anything about he had loaned the Dohertys notes signed by J. W. Calnan Company?

Mr. BLANCHARD: If your Honor thinks it is material at all?

The REFEREE: I think it meets what you brought out.

A. Yes, sir.

X Q. 472. There were disputes between M. Doherty & Company and J. W. Calnan Company in regard to notes?

A. Yes, sir.

X Q. 473. Did he tell you that at some time he was going to have a settlement?

A. Yes, sir.

X Q. 474. With them?

A. He certainly did on those note transactions; yes, sir.

X Q. 475. Now, as president of the J. W. Calnan Company, did you take any active part in its business?

A. None.

X Q. 476. Who did take the active part in the business of the J. W. Calnan Company?

A. Mr. Wise was about the whole thing.

X Q. 477. What?

A. Mr. Wise was about the whole thing.

X Q. 478. And as I understand you to say you were a mere figurehead?

A. That is about all.

Mr. BLANCHARD: He signed this for the corporation.

X Q. 479. Perhaps I added the word "mere." Were you anything more than a figurehead?

A. That is all.

X Q. 480. How many shares of stock stood in your name?

Mr. BLANCHARD: I suppose that is better shown by the records, if there are any.

The REFEREE: I suppose a simple question like that he may answer, if he knows.

A. I don't remember the amount.

X Q. 481. Do you know whether you had more than one share?

A. One, I think; that is all.

X Q. 482. And did you have anything to do with the business of the J. W. Calnan Company?

A. No, sir.

66 X Q. 483. Or its transactions?

A. No, sir.

X Q. 484. And in making up this return to the State the first of

May, did you take the report and rely upon the report of the treasurer?

A. That is all; yes, sir.

X Q. 485. And that treasurer was Mr. Wise?

A. Yes, sir.

X Q. 486. And you did know from talk that you had with Mr. Wise that the Calnan Company was engaged in exploiting some bitters?

A. Bitters.

X Q. 487. And some brand of cigars?

A. Cigars; yes, sir.

X Q. 488. And did you know that Mr. Wise or the J. W. Calnan Company had an office upstairs?

A. Yes, sir.

X Q. 489. In the building?

A. Yes, sir.

X Q. 490. Upstairs?

A. Yes, sir.

X Q. 491. I will ask you one more question: whether or not any good will mentioned there, or cash or debts receivable mentioned there in that report, had anything to do with the business carried on by you in the liquor business?

A. Not anything.

X Q. 492. What?

A. No, sir; nothing.

Mr. ELDREDGE: That is all.

Mr. BLANCHARD: That is all.

[Adjourned.]

Adjourned Hearing, January 9, 1909.

MICHAEL H. CURLEY (sworn).

Direct examination.

(By Mr. BLANCHARD:)

Q. 1. What is your full name Mr. Curley?

A. Michael H.

Q. 2. Your business?

A. Merchant.

Q. 3. And deal in the wholesale department of liquors?

A. Yes.

Q. 4. Do you know John P. Wise?

A. I do.

Q. 5. And do you know the firm of J. W. Calnan & Company?

A. I never have met any of them except I have met Mr. Wise, but no other head of the firm.

Q. 6. When did you begin doing business with the J. W. Calnan Company?

A. Really I could not say, I am not very familiar with the details of the business. My bookkeeper has more to do with it than I.

67 Q. 7. There was a time, was there not, when somebody came to you, and asked you about commencing a credit with the J. W. Calnan Company?

A. I don't think the credit was ever mentioned, or anything ever said about credit. Oh, several years ago Mr. Wise came in and bought perhaps one package. At that time I hesitated about selling, knowing he was trading with M. Doherty & Company, but he said he wanted it for a special use, and then I let him have it. And then I had nothing further to do with the concern—

Mr. ELDRIDGE: I think Mr. Curley ought to say whether Mr. Wise personally or J. W. Calnan Company, corporation. The book-keeper testified the sales were with J. W. Calnan & Company?

A. That was recent sales.

Mr. BLANCHARD: The checks show J. W. Calnan Company. I want to show the entire negotiation was done with John P. Wise.

Q. 8. Now, Mr. Curley, recently, did Mr. Wise see you about making some purchases for the J. W. Calnan Company?

A. Some time ago; I could not say just when; I suppose my books would have shown, if here, when he opened the account; he ordered goods for the J. W. Calnan Company.

Q. 9. Now, tell us what conversation you had with Mr. Wise at the time you began doing business there?

A. I had no conversation with him other than to say that I would send the goods there.

Q. 10. He came and saw you in the first place?

A. He came in and asked that I send one or two packages to J. W. Calnan Company, or & Company,—I don't know how it was. I suppose it was entered on the books right. I had our—the invoice being sent to the company as we understood it to be, and it was returned stating—

Mr. ELDRIDGE: That letter has gone in?

A. That is it.

Q. 11. You say he came in and asked you for a couple of packages? What more conversation took place?

A. I had none whatever. I was rather surprised he had left his place of trading, and I hesitated about interfering with anybody else's trade, but I finally took the order.

Q. 12. Did he give you shipping directions?

A. No; we knew that; his store—

68 Q. 13. Where were the goods shipped to?

A. Oh, I have no positive knowledge; I suppose they were shipped to the J. W. Calnan Company.

Q. 14. I mean to his place of business?

A. I don't know.

Q. 15. Do you know Mr. Sullivan here?

A. No, sir.

Q. 16. Have you ever seen him before this morning?

A. No, sir; never seen any of the firm.

Q. 17. Have you ever seen anyone else in connection with pack-

ages shipped to J. W. Calnan Company, or & Company, except Mr. J. P. Wise?

A. No; all other orders I received was over the telephone.

Q. 18. But my question was: Did you see anybody else in connection—

A. No, sir.

Q. 19. With orders for shipment excepting J. P. Wise?

A. I think my bookkeeper has talked with others over the 'phone, but who I don't just know.

Cross-examination.

(By Mr. ELDREDGE:)

X Q. 20. I understand this talk with Mr. Wise was several years ago, or quite awhile ago? This talk with Mr. Wise was quite awhile ago?

A. I have known him for quite awhile; I remember specifically he came in and bought a package of goods. As I say—

X Q. 21. Of course your books show to whom the sales were made?

A. I presume so. I haven't noticed them.

X Q. 22. If it says "J. W. Calnan & Co.," that, of course, is correct?

A. Probably it was; I never had any personal knowledge.

X Q. 23. Personally you have no knowledge of the sales or purchases?

A. No.

X Q. 24. And of course it is a familiar rule, is it not, not to sell goods to any one but a licensed dealer? I mean for the purpose of being sold at retail?

A. Well, I don't know that I understand.

X Q. 25. That, ordinarily, you sell to a licensed dealer,—licensed retail dealer?

A. Well, I think that would be a matter of indifference to the dealer who is selling. He would sell whoever he thought could pay for it. I don't think they would investigate that, as a rule.

69 X Q. 26. Do not the police have some rule wholesalers shall not sell for the purpose of being sold at retail to anybody but a licensed dealer?

A. It would not enter into business like mine. We are supposed to sell all over the country to other people. We never investigate that.

X Q. 27. About this, personally, I suppose, you don't know much now about this matter, do you?

A. No, I do not.

X Q. 28. You know you had at some time some talk with Mr. Wise?

A. I have talked with him.

X Q. 29. And these orders that have been sent in, that is given to your bookkeeper, I assume, or to some member—

A. I don't know, I might have often taken one of the orders over the 'phone myself.

X Q. 30. But you have no recollection of it?

A. Not who I talked with. I think, though, my bookkeeper, when I turned the 'phone over to him, said Mr. Sullivan was talking.

Redirect examination.

(By Mr. BLANCHARD:)

Q. 31. I understand after that first order several years ago you had no further talk until he began trading recently?

A. Not on business, so far as I met him.

Q. 32. But when you began to extend this credit, you did see Mr. Wise?

A. I saw him some time ago, I could not tell just when.

Q. 33. About how long, please?

A. Oh, it might have been nearly two years past, possibly a year and a half or two years.

Q. 34. Was that the time you began trading with him again?

A. Yes.

Mr. BLANCHARD: That is all.

Recross-examination.

(By Mr. ELDREDGE:)

X Q. 35. It may have been two years or more?

A. I really could not tell. I think the books will show just when that original order was given.

Redirect examination.

(By Mr. BLANCHARD:)

Q. 36. And that was the time you had the talk with Mr. Wise you have given here?

A. Well, I have talked with him several times.

70 Q. 37. I appreciate that; you have not given—what I am only trying to get at is whether or not the last time he came to see you about extending credit was the time when you first shipped him goods, the last time?

A. That is a year and a half or two years ago.

Q. 38. It may be; I don't think it is as long as that.

A. Well, the books will show that.

Q. 39. That is what I want to get at, and whether or not the books would correspond, or about correspond, to the date of the conversation with Mr. Wise?

A. Yes.

Mr. BLANCHARD: That is all.

MICHAEL MURRAY (sworn).

Direct examination.

(By Mr. BLANCHARD:)

Q. 1. Your full name, Mr. Murray?

A. Michael Murray.

Q. 2. You are in the retail liquor business, Mr. Murray?

A. Yes, sir.

Q. 3. Where is your place of business?

A. 8 Broadway, South Boston.

Q. 4. Do you know John P. Wise?

A. I do; yes.

Q. 5. And did you purchase sometime from him some goods?

A. Yes, a barrel of whiskey from him.

Q. 6. And have you the bill?

A. Yes. [Witness produces bill. Exhibit 13.]

Q. 7. Do you know whose whiskey that was, or do you know what whiskey that was?

A. No; I haven't the slightest knowledge.

Q. 8. Do you know what particular grade of whiskey it was, or what it is called?

A. I could not call to memory now what grade of whiskey it was. [Bill read.]

Q. 9. Did you give a check in payment of that?

A. Yes.

Mr. BLANCHARD: That is dated Jan. 1, 1907. Pay to the order of John P. Wise, \$79.30, and signed Michael Murray, drawn on the Metropolitan Deposit & Trust Company.

Q. 10. Do you know where those goods came from?

A. I don't; no. I could not say; they were delivered from the store; that is all.

71 Q. 11. Did you know how they were in the store?

A. No; I don't think—I was not in the store at the store.

Mr. ELDREDGE: No questions.

JOHN A. SULLIVAN (resumed).

(By Mr. BLANCHARD:)

Q. 493. Mr. Sullivan, is that your signature on there?

A. Yes, sir; that there at the bottom?

Q. 494. Yes.

A. Yes, sir.

Q. 495. Under the receipt of J. P. Wise is initials J. A. S. Was that a bill for the goods which were shipped from the store on Pleasant Street, or Tremont and Pleasant Street?

A. I should say so.

Q. 496. It was?

A. I think so.

Q. 497. Was that some of the goods received from M. Doherty & Company?

A. I could not tell you about that.

Q. 498. Were you receiving whiskey from any other source at that time?

A. We got some from the Rex.

Q. 499. Do you know what it was for?

A. No, sir; I could not tell you.

Q. 500. Did you get that check at the time you receipted this bill?

A. Well, I could not say; I don't remember.

Q. 501. Well, have you any doubt about it?

A. No; I have not. It must have been as you say.

Q. 502. Have you got any explanation to offer to the court why, for a bill running from J. W. Calnan to Mr. Murray, you took a check in the name of John P. Wise in settlement?

Mr. ELDREDGE: Wait a minute. He does not need to give any explanation.

The REFEREE: I think he may answer that question.

A. What is the question again?

Q. 503. Have you got any explanation that you wish to give to the court for billing these goods and delivering them from the store of J. W. Calnan or J. W. Calnan Company—

Mr. ELDREDGE: It says J. W. Calnan.

Q. 504. —to Mr. Murray, then taking a check payable to John P. Wise?

A. I have no explanation to give about it.

Q. 505. No explanation whatever? I understand, Mr. Sullivan, that you said the other day that from the time you entered
72 into the possession of the store up there, you conducted the business yourself?

A. Yes, sir.

Q. 506. There is no doubt about that in your mind at all?

A. Certainly not.

Q. 507. You had no other business—no other employer—you had no employer there?

A. No, sir; I was boss myself.

Q. 508. You were boss yourself?

A. Yes, sir.

Q. 509. And in ordering goods, or giving orders for goods, you always gave them as yourself being proprietor there?

A. Well, I did not make any special note of that in giving any orders. I just merely ordered the goods.

Q. 510. Is that your postal card—writing—(handing witness postal card)? Well, first identify the writing. Is that your signature?

A. Yes.

Mr. BLANCHARD: This is a postal card, may it please the court.

"M. Doherty & Co., 192 Kneeland St., City."

[The date on the postal stamp is Feb. 10, 1908, and it is dated Feb. 10.]

"FRIEND JOHN: I wish you would send that whiskey; the boss would not like it if he knew I didn't have it.

J. A. SULLIVAN."

Q. 511. Who is Friend John?

A. I suppose I addressed that to Mr. Callahan.

Q. 512. That is who you intended this postal to mean?

A. Yes.

Q. 513. Who did you mean by the "boss would not like it?"

A. Well, I could not explain that.

Q. 514. You can't explain it? You have no other explanation to offer of it?

A. No.

[Bill of Michael Murray marked "Exhibit 12." Check marked "Exhibit 13." Postal card marked "Exhibit 14."]

Cross-examination.

(By Mr. ELDREDGE:)

X Q. 515. Mr. Sullivan, did you sometimes call Mr. Wise "boss," that is, designating him as "boss"?

A. Sometimes. I worked for him, so on.

73 X Q. 516. And when you spoke of Mr. Wise, you sometimes spoke of him as "boss"?

A. Sometimes, and probably—

X Q. 517. Now, did Mr. Wise request you after you bought out to buy of M. Doherty & Company?

A. Yes, sir.

Mr. BLANCHARD: I don't see how this is material.

X Q. 518. Did he say that he had dealings with M. Doherty & Company, and that he wished you would buy from them?

A. Yes, sir.

X Q. 519. And did you, through Mr. Wise, make those purchases?

A. Yes, sir.

X Q. 520. Did you understand that Mr. Wise was a member of the firm of M. Doherty & Company?

A. I used to think so. I didn't know, but I always thought he was.

X Q. 521. When did you learn to the contrary?

A. Not until this case come up.

X Q. 522. Did you understand that he was a member of the firm of M. Doherty & Company?

A. I thought he was.

Mr. BLANCHARD: Does your Honor think this is material on cross examination?

The REFEREE: I think this has some bearing explanatory of the relations of the parties, especially in connection with this last postal.

X Q. 523. I think you testified the other day that you knew that there were many note transactions between the parties?

A. Yes, sir.

X Q. 524. That is, had you seen Mr. Callahan—was it Mr. Callahan that used to come up and seek out Mr. Wise?

A. I think Mr. Callahan.

X Q. 525. And he is the Callahan that is mentioned here; is he the same Callahan that you testified the other day that was originally on the license with Mr. Wise?

A. Yes, sir.

X Q. 526. And did you see him and Mr. Wise transacting business—I mean by giving checks and notes and like that?

A. Well, I have seen——

Mr. BLANCHARD: How can that be competent?

X Q. 527. When you used to work for him?

A. I have seen a number of transactions.

Mr. BLANCHARD: Mr. Callahan is an employé of Mr. Doherty.

74 Mr. ELDREDGE: I don't know.

The REFEREE: It is on cross examination, and I will admit it.

[Former question read.] A. Yes.

Mr. ELDREDGE: I think that is all.

Redirect examination.

(By Mr. BLANCHARD:)

Q. 528. Did you know anything about any of the details of the business that was transacted by them?

A. Sometimes I have heard remarks made between them.

Q. 529. Did you know about the details of the business transacted between them?

A. Not particulars, but I heard remarks made between them.

Q. 530. As a matter of fact, wasn't, Mr. Sullivan, all the business that they ever did, wasn't it done in an office?

A. In a storeroom——

Q. 531. Transacted in an office?

A. Yes, but there is a storeroom——

Q. 532. The checks and notes, if there were any signed, were signed in an office?

A. Certainly.

Q. 533. And your place was behind the bar in an outside room?

A. No, sir.

Q. 534. Wasn't that your place?

A. No.

Q. 535. Weren't you at that time a bartender?

A. Even so, I had other—I had business in the storeroom beside at the bar.

Q. 536. Do you mean when you heard these remarks you were at the storeroom?

A. Mostly.

Q. 537. I don't suppose you were listening to what was said by your employer?

A. Not exactly. I mean not necessarily. A man might hear without listening.

Q. 538. Did you hear things?

A. Sometimes.

Q. 539. Where was the storeroom situated with reference to the office?

A. Surrounding the office.

Q. 540. The office is a partitioned office, isn't it?

A. Well, about like that there, but it is not enclosed.

Q. 541. Isn't it entirely enclosed?

A. No.

75 Q. 542. Do you mean to say these people could see you and you them?

A. Part of the time they could; if I was on the end, they could not; if I was on the front, I could not.

Q. 543. The only time you happened to hear any remarks was when you were in the storeroom?

A. Yes, sir.

Q. 544. What made you think, or gave you to understand, that Mr. Wise was ever a partner of M. Doherty & Company?

A. Well, there was so much business, so much running back and forth, between Mr. Callahan and Mr. Forrester, I thought he was. One time, in a joking way, I said, "Are you in that firm down there?" He said, "I might as well be; I have to pay out a good deal to keep them going." So I took it from that—

Q. 545. You took it from that he was a partner?

A. Yes, sir.

Mr. BLANCHARD: That is all.

JOHN T. CALLAHAN (recalled).

Direct examination.

(By Mr. BLANCHARD:)

Q. 147. Mr. Callahan, you were one of the original subscribers to an agreement of association with J. W. Calnan Company?

A. Yes, sir.

Mr. BLANCHARD: I now offer, may it please the court, a certified copy of the Articles of Association, and for the purpose of showing the business there described is importing, manufacturing, buying and selling merchandise. Dated the first of January, 1902. [Marked "Exhibit 15."]

I offer in addition to that, may it please the court, the certificate of paid up capital at that time, which was required at that time, and I call your attention to that particular portion of it which described

the capital, being merchandise \$2000, fixtures \$1500, cash \$6500, making the total \$10,000.

Q. 148. Mr. Callahan, at the time you signed and swore to that certificate of paid up capital, what was the property that J. W. Calnan Company possessed and referred to shown in this as merchandise and fixtures?

A. The store 321 Tremont Street and 98 Pleasant Street.

Q. 149. Was there any other property owned by the J. W. Calnan Company at that time?

A. No, sir.

76 Q. 150. Was there any property at any time owned by the J. W. Calnan Company, so far as you know?

A. No, sir.

Q. 151. And was the \$6500 in cash money in the bank to the credit of J. W. Calnan Company?

A. That was in the hands of the treasurer. I don't know just how it was, whether in the bank, or whether he had it in cash.

Q. 152. Did the J. W. Calnan Company have any other place of business, or any other fixtures excepting only the fixtures there in that store?

A. None that I know of.

Mr. BLANCHARD: I offer this, may it please the court. [Marked "Exhibit 16."]

Mr. BLANCHARD: That is all.

Recross-examination.

(By Mr. ELDREDGE:)

X Q. 153. For all you know the J. W. Calnan Company, if they owned those fixtures, might have transferred them to J. P. Wise?

Mr. BLANCHARD: I object.

X Q. 154. You have been out of the corporation for a long time?

A. I don't know what happened after I got out.

X Q. 155. And you got out when?

A. I don't remember the date.

X Q. 156. Quite a while ago?

A. That was 1902 it started; it could not have been very long ago. I don't remember that; I didn't keep them in my mind.

X Q. 157. You were a kind of figurehead anyway?

A. No, I will not admit that I was a figurehead.

X Q. 158. You had nothing but a small interest?

A. I had a small one, one share or two shares.

X Q. 159. Nothing substantial, Mr. Wise was the whole thing?

A. Mr. Wise was practically the whole, except for one or two shares.

X Q. 160. I say for all you know the J. W. Calnan Company might have transferred to J. P. Wise?

A. I don't know anything about it after I left.

Mr. BLANCHARD: It cannot sell its business.

The REFEREE: I understood you to say, for aught he knew, the corporation may have transferred these fixtures to Mr. Wise? I see no objection to that question.

77 X Q. 161. For aught you know that is so?

A. After I got out, I don't know what happened.

X Q. 162. You knew Mr. Wise was trying to sell his business up there?

Mr. BLANCHARD: How can that be competent?

The REFEREE: On cross-examination you may ask him about Mr. Wise. The question is, was Mr. Wise the owner of this business?

X Q. 163. Did you know that Mr. Wise was trying to sell this business out here a year or two years ago—two or three years ago?

A. Well, you are spreading it over the whole length of time.

X Q. 164. Put it two or three years ago.

A. I know sometime Mr. Wise said, "If I could get my price I would sell it," but he had offers and did not sell.

X Q. 165. Didn't you know he did wish to sell, and the price was spoken of between you and him?

A. I will not swear to that, I don't remember that part of it.

X Q. 166. But what price was mentioned by him to you as to what he would sell out for?

A. I would not testify to that; I don't remember this. I don't remember whether he did say or not.

X Q. 167. You were there when Mr. Sullivan did take possession?

A. Nothing to do with him.

X Q. 168. You didn't want to buy the place?

A. No, sir, I didn't want it; I would not buy it if I got it for \$10—

X Q. 169. Do you know who was on the license when you were?

A. I was at one time.

X Q. 170. John P. Wise and yourself were on the license?

A. Yes, and his sister at different times.

X Q. 171. Along at the first—

The REFEREE: Before the incorporation?

X Q. 172. After the incorporation?

A. I think I was before and after. He tried to get it in the name of a corporation, and they would not license it as a corporation, told us we would have to have it in our names.

X Q. 173. And you and Mr. Wise were on the license?

A. Yes.

X Q. 174. Later you dropped out?

A. Yes, sir.

78 X Q. 175. Then he and his sister?

A. His sister or wife—sister, I guess. His wife was on when I went on.

X Q. 176. Later on, when you dropped out, he and his sister were on the license?

A. Yes.

X Q. 177. Later on you knew there was a time when his sister was not on the license?

A. His sister died.

X Q. 178. Then you knew he was on the license alone?

A. I don't know, I would not say whether he put any one on it or not. I know I was not.

X Q. 179. When did you go to M. Doherty?

A. To work?

X Q. 180. To work.

A. Something like 20 years ago.

X Q. 181. And this corporation, I understood you to say, was formed the first of January, 1902. Can you tell when you dropped off the license?

A. No, I could not tell; I don't remember that.

Mr. ELDREDGE: I think that is all.

Redirect examination.

(By Mr. BLANCHARD:)

Q. 182. Do you recall in May, 1902, making an application—both you and Wise for a license?

A. Well, I would not be sure that particular year, but I know one year after the corporation was formed there was two applications made, one as a corporation and the other as an individual, and the commissioners decided they would not grant the corporation a license. I think it went to a hearing, and they said they would not license a corporation. It would have to go to individuals. Then it was granted to J. W. Calnan & Company in our names.

Q. 183. That is, Mr. Wise and yourself?

A. Yes.

Q. 184. That sign, J. W. Calnan, has been up there for a great many years?

A. No; not that particular one.

Q. 185. There was a sign?

A. Yes.

Recross-examination.

(By Mr. ELDREDGE:)

X Q. 186. And the name has been a trade name?

A. If you will allow me to explain that—

X Q. 187. That has come to be a trade name?

A. Yes.

79 Redirect examination.

(By Mr. BLANCHARD:)

Q. 188. What explanation?

A. The name was changed.

Recross-examination.

(By Mr. ELDREDGE:)

X Q. 189. It was J. W. Calnan?

A. First it was J. W. Calnan, then John P. Wise, then J. P.

Wise & Company, then J. W. Calnan & Company, J. W. Calnan Company.

X Q. 190. It was originally James W. Calnan?

A. Originally Mr. Calnan. Then Mr. Wise bought it.

Mr. BLANCHARD: That is all I have to offer.

Mr. ELDERIDGE: I have nothing further to offer at this time.

[Adjourned.]

Adjourned Hearing, Jan. 15, 1909.

RONALD CAMPBELL (sworn).

Direct examination.

(By Mr. BLANCHARD:)

Q. 1. What is your full name?

A. Ronald Campbell.

Q. 2. And your occupation?

A. Well, I am New England agent of the Low Manufacturing Company, of Cleveland, Ohio.

Q. 3. Were you at some time in the employ of the Massachusetts Breweries?

A. I was several years ago.

Q. 4. At that time what was your business?

A. My occupation you mean? Duties?

Q. 5. Yes.

A. My duties were assistant bookkeeper.

Q. 6. Whether or not you had charge of the accounts?

A. I had charge of certain portions of the accounts.

Q. 7. Did you have the account of J. W. Calnan Company?

A. Yes; I had charge of that account.

Q. 8. Now, whether or not those goods were sold and delivered—the goods there charged for in that account? Whether the goods charged in the account of J. W. Calnan Company were sold and delivered?

A. Yes, sir.

Q. 9. Where were they delivered?

A. J. W. Calnan's store on Pleasant Street, corner of Pleasant.

80 Q. 10. You don't know, I take it, the amount of the balance due at the present time?

A. I have an idea, I have a pretty good idea.

Mr. ELDERIDGE: Wait a moment. There must be some books of original entries which show that.

Mr. BLANCHARD: I take it in this court we are not bound by the strict rules of proof in relation to accounts.

The REFEREE: I do not see why the question that you ask him is not a perfectly proper question for him to state. You are not asking for the production of any accounts or statements.

Mr. ELDERIDGE: If the court will pardon me a moment. This is

an assistant bookkeeper not now working for the concern, and simply asking for his guess as to what he thinks the books show.

The REFEREE: He has not asked for any guess, if he knows about it. You can test his memory or knowledge on cross examination. Now, you put your question, Mr. Blanchard.

Q. 11. Do you know the balance which was due from J. W. Calnan Company to the Massachusetts Breweries?

Mr. ELDREDGE: I object to that question, because I am not clear whether he says J. W. Calnan & Company or J. W. Calnan Company.

Mr. BLANCHARD: For the purposes of this it does not make the slightest difference. If the goods were sold and billed to J. W. Calnan & Company, and delivered to the place of business, and used in the business of J. W. Calnan Company, I suppose by operation of law, I suppose, your Honor, under those circumstances, that that doctrine of law, undisclosed principal, would operate here, and if this was shipped to the store of J. W. Calnan Company, and your Honor became satisfied, that that would be sufficient to entitle them to recover in an action of law, and hence would be sufficient to entitle them to establish their claim here.

The REFEREE: I think this witness can state what he knows, what he refers to.

[Exception saved.]

A. Well, at the time that I left the Massachusetts Breweries, so far as I recollect, J. W. Calnan & Company owed us three months and a few days balance, which I think was about \$900. I have no recollection as to the exact amount, but in my memory that is all I know. I haven't had any information since I left the place a year ago.

81 Q. 12. How long had you been with the Massachusetts Breweries?

A. I was with them since they started the company; probably seven or eight years.

Q. 13. You mean the Massachusetts Breweries Company?

A. Yes; I was with them.

Q. 14. Now, did you, during the progress of your employment there, have from time to time to do with Mr. Wise in connection with this account?

A. Yes, sir; I had.

Q. 15. Now, will you state, if you please, when you first saw Mr. Wise in connection with the account, and how the account stood on your books at that time?

A. When I first saw Mr. Wise?

Q. 16. Yes.

A. Well, I really could not tell you. It was several years prior to the time I left the Massachusetts —. Several years.

Q. 17. How did the account stand on the books of the Massachusetts Breweries at that time?

Mr. EEDREDGE: I object; the books is the best evidence.

A. You mean the style of the firm?

Mr. BLANCHARD: Only a preliminary question, because I am going to show it was changed.

The REFEREE: You can ask if he recalls how the entries were made.

Q. 18. Do you recall how the entries were made at the time you first began doing business, or the Massachusetts — first began doing business?

A. No; I don't remember; I didn't have that account when I was there first.

Q. 19. Do you remember at any time there was a change in the account?

A. Well, I believe it was once changed from Wise to J. W. Calnan & Company.

Q. 20. When was that?

A. Well, I could not tell you the year.

Q. 21. Was that changed as the result of a talk with him, or something else?

A. It was not changed during the time I had the account, because when I took the account it was J. W. Calnan & Company.

Q. 22. Were payments made on that account from time to time?

82 A. Yes, there was; it was generally paid—the account was always in arrears about three months, and Mr. Wise used to call every month and hand me a check and pay the bill. It was generally about three months in arrears.

Q. 23. Do you recall what the form of the check was?

A. An ordinary check signed by Mr. Wise, J. W. Calnan Co., J. P. Wise, so far as I recollect. Mr. Wise called every month and settled with me.

Q. 24. And you turned the check over——

A. I immediately went over with the statement and check to the cashier, took the check, and receipted the statement.

Cross-examination.

(By Mr. ELDREDGE:)

X Q. 25. Now, Mr. Campbell, have you a transcript of the books here?

A. No, sir.

X Q. 26. Have you seen it this morning?

A. I have not seen it since I left the Massachusetts Breweries.

X Q. 27. Have you the books here at all?

A. No; I have not.

Mr. BLANCHARD: They are not here.

X Q. 28. Has anybody else got the books?

A. No.

X Q. 29. Now, don't you know that the account was charged to J. W. Calnan & Company?

A. I believe so.

X Q. 30. Don't you know?

A. I think, to the best of my ability, when I kept that account it was J. W. Calnan & Company.

X Q. 31. J. W. Calnan & Company?

A. I think so.

X Q. 32. When did you leave their employment?

A. I left their employ last April.

X Q. 33. Last April?

A. Yes.

X Q. 34. When you left there in April, 1907, the account stood upon the books of the—

Mr. BLANCHARD: 1908.

X Q. 35. 1908; pardon me. You knew that J. W. Calnan & Company ceased to do business with the Massachusetts Breweries Company about the first of June, 1907?

A. That is correct; about that time.

X Q. 36. About the first of June, 1907?

A. Yes; I recollect that time.

X Q. 37. And prior to that time the bills were made out regularly to J. W. Calnan & Company, were they not?

A. I believe so.

83 X Q. 38. And were receipted by the Massachusetts Breweries Company?

A. Yes.

X Q. 39. Now, the way the Breweries Company make out the bill in this way, isn't it—I don't know whether concerns—the Massachusetts Breweries Company is composed of four or five different concerns?

A. Yes; five different concerns.

X Q. 40. A man buying goods would be charged so much for Alley, so much for Pfaff, so much for Revere, and like that would make up the gross bills

A. As a rule—the general practice where a man takes several of their lines of goods, they give him an account for his Alley, which would probably be ale. They would give him ale; they would give him lager beer on account for another branch.

X Q. 41. But it would be all on one statement?

A. Oh, no.

X Q. 42. Wouldn't it all be on one statement to be paid?

A. No; there are such accounts on the books, but as a matter of simplicity, it is easier to keep three accounts, perhaps. It is much easier kept and easier checked over.

X Q. 43. Will you look at the papers I now show you and say whether or not those are not statements rendered, receipted and paid in 1906?

A. Yes; that is right.

X Q. 44. And it does appear, does it not—this is Aug. 1; take the July account—it appears Pfaff so much, Revere so much, Alley so much—H. & C.—what is that?

A. Hanley & Casey—

X Q. 45. So much—and what is the other?

A. Revere, Alley, Hanley & Casey.

X Q. 46. Pfaff, Revere, Hanley & Casey; all on one statement?

A. Not in the same manner as you wish me to answer you. This account is only one branch.

X Q. 47. You mean the items?

A. The items; that is all the Pfaff branch.

X Q. 48. Those items on there are in gross?

A. The others have been brought over for the purpose of convenience at the time of payment

X Q. 49. Now, that account is made to J. W. Calnan & Company?

A. Certainly.

X Q. 50. That is the way it stood upon the books?

A. Certainly.

84 X Q. 51. Have you looked through those for September, 1906?

A. Yes.

X Q. 52. That is J. W. Calnan & Company just the same?

A. Just the same.

X Q. 53. The first of November and the first of December?

A. Yes; right along.

X Q. 54. Take the December first starts off with branch Revere?

A. Yes.

X Q. 55. At the head, and then Pfaff, Alley, etc., are put on in gross; I mean the gross amounts.

A. They are not put on by us. They were put on when Mr. Wise came with his check, and so it is only one branch. That is Mr. Wise's own writing. Mr. Wise did that, and then brings in his check. And sometimes I have done it. This is for the purpose of condensing them all on one statement. But the statements rendered—

X Q. 56. It embraces all that was due?

A. That time, certainly.

X Q. 57. They appear all to have been paid, those that I show you; they start with Aug. 1, 1906, to and inclusive of Dec. 1, 1906?

A. Well, those are receipts; I presume they pay those bills.

X Q. 58. I say it apparently appears to be all there was due for those months from the respective four concerns for the four brands, or whatever it is?

A. Yes, I should say so.

X Q. 59. Now, it is a fact, is it not?

Mr. ELDREDGE: I would like to put those in. (Marked "Exhibit 17.")

A. I want to have a look at them before you asked any more questions.

X Q. 60. I say it is a fact those bills are in gross. What I mean by that is there are certain rebates and certain discounts—

A. When?

X Q. 61. That come off those?

A. Mr. Calnan was entitled to and did get.

X Q. 62. That is true, isn't it, there are certain rebates and certain discounts that come off those bills?

A. Well, that time there were.

X Q. 63. At that time there were?

A. I don't know what the Massachusetts are doing now.

85 X Q. 64. Take the bill of Oct. 1 you have for \$451.71.

It would not mean that you would receive a check for that amount?

A. Not always, no.

X Q. 65. You would receive a check less the rebate and less the discount?

A. Presumably.

X Q. 66. I suppose I call your attention——

Mr. BLANCHARD: Will you produce the checks now that paid those?

X Q. 67. As illustration, take the bill which is Aug. 1, 1906, which is for the July account, made out to J. W. Calnan & Company; a slip something like that would be given, would it not?

A. All those slips were made out by me just as a favor to Mr. Wise, so that he could see at a glance what the check was to be for that month.

X Q. 68. The total of this bill, which is marked "Exhibit 17," and which is dated Boston, Aug. 1, 1907, amounts to \$513.75?

A. Possibly.

X Q. 69. Doesn't it? It is so, isn't it?

A. It is so.

X Q. 70. And it is upon this paper. I will have marked "Exhibit 18," bill \$513.74, 3%, there is a discount, \$13.32.

Rebate	69.87
Cash	430.56

Mr. BLANCHARD: I can't see any material bearing——

The REFEREE: I can't see the slightest. This is cross-examination, and I will let him go into it.

X Q. 71. And that is how that statement was made up?

A. I made it up for convenience every month, to help him out, to give a check, and also for myself, so that I might have it at my own finger ends.

[Statement marked "Exhibit 18."]

X Q. 72. And it is not true that the bills, up to the time J. W. Calnan & Company ceased to do business there,—up to about the first of June,—were made out in a similar manner to the bills I have shown you and marked "Exhibit 17"?

A. Well, they were made out a bill for each branch, not as you wish to infer. They were not made out on one sheet, only at the time of settlement the other branches were carried over to there for convenience.

86 X Q. 73. I say the statement was just the same as that?

A. Just the same exactly.

X Q. 74. A continuation down to the first of June?

A. Yes, I believe it was the ninth, so far as I recollect, it was sometime in June.

X Q. 75. Early in June?

A. Yes.

X Q. 76. And that is the way these accounts stand upon your books?

A. That is the way they stood when I left, so far as I am aware.

X Q. 77. When I say your books I mean the Massachusetts Breweries books?

A. Yes.

Mr. ELDREDGE: That is all.

JACOB A. KASWELL (sworn).

Direct examination.

(By Mr. BLANCHARD:)

Q. 1. Your full name is—

A. Jacob A. Kaswell.

Q. 2. You are the chief bookkeeper for the Massachusetts Breweries Company?

A. I am.

Q. 3. And have in charge all the books?

A. General charge.

Q. 4. In their business?

A. Yes.

Q. 5. Do you know the account of J. W. Calnan & Company?

A. I know there was such an account on the books.

Q. 6. And do you know the balance that remains due at the present time on that account?

A. About \$900. I could not say the exact amount to a cent, but in the neighborhood of \$900.

Q. 7. Do you know Mr. Wise?

A. I do.

Q. 8. And was there any change at any time in the way in which that account was kept?

A. The account was formerly J. P. Wise & Co.; the first day of April, 1902, it was changed to J. W. Calnan & Co.

Mr. ELDREDGE: "& Co."?

A. Yes.

Q. 9. Why was it so changed, if you know?

A. I cannot say so positively, but I think by order of Mr. Wise; that is my impression.

87 Cross-examination.

(By Mr. ELDREDGE:)

X Q. 10. That is, it was kept up from early in 1902 as J. W. Calnan & Company?

A. J. W. Calnan & Company.

X Q. 11. And these statements which I have shown to the former bookkeeper are statements issuing from the Massachusetts Breweries?

A. They are.

X Q. 12. Apparently are a transcript of their books of the account of J. W. Calnan & Company, 321 Tremont Street, Boston, Mass.

A. Yes.

X Q. 13. And would be the amounts due from J. W. Calnan & Company to the Massachusetts Breweries for July, August and so on?

A. Whatever it may be.

X Q. 14. Each month?

A. Each month.

Mr. ELDREDGE: That is all.

Mr. BLANCHARD: That is all the intervening creditor has to offer.

For Respondent.

HENRY A. DOHERTY (sworn).

Direct examination.

(By Mr. ELDREDGE:)

Q. 1. Mr. Doherty, your full name?

A. Henry A. Doherty.

Q. 2. Henry A. Doherty?

A. Yes.

Q. 3. And you do business under the name and style of M. Doherty & Company?

A. Yes.

Q. 4. Is Mr. Callahan interested with you?

A. What?

Q. 5. Interested with you, Mr. Callahan, this gentleman? Perhaps I haven't got the name right,—this gentleman here?

A. I don't know as I understand—interested how?

Q. 6. Is he interested?

A. He is in my employment; yes.

Q. 7. Will you look at those two notes, and say whether or not that is the signature of M. Doherty & Company?

A. It is.

Q. 8. Signed by you?

A. It is.

Q. 9. And those are notes which were given to Mr. Wise?

88 Mr. BLANCHARD: How is that material? This has nothing to do with Mr. Wise. This petition in bankruptcy is against the Calnan Company.

Q. 10. They were given to Mr. Wise?

A. Yes.

Q. 11. And they were made payable to the order of J. W. Calnan & Company, were they not?

A. Yes.

Q. 12. Whose handwriting is this, the body of that note?

A. That was Mr. Callahan's.

Q. 13. Now, it is a fact, is it not, that there were many note transactions between Mr. Wise and J. W. Calnan Company, M. Doherty & Company, Mr. Callahan and Mr. Forrester?

Mr. BLANCHARD: I object to that, may it please the court. Suppose he had better put one question at a time; whether there were

any transactions between Mr. Doherty and the Callahan Company. I suppose that would be material.

The REFEREE: You may ask the question.

[Question read by the stenographer.]

A. Yes, I should say so.

Q. 14. And that covered a period of how long a time?

A. Well, I could not say. I can answer for M. Doherty & Company.

Q. 15. Well, approximately, how long a time? Three or four years—five or six years?

A. Oh, I should say 20 odd years.

Q. 16. Twenty odd years—that is to say, M. Doherty & Company have been giving notes to Mr. Wise and the J. W. Calnan Company have been giving notes to M. Doherty & Company?

A. I should say so; yes.

Q. 17. And at times the notes that were given would be signed by Mr. Callahan, would they not?

A. No.

Q. 18. Or endorsed by Mr. Callahan?

A. Not to my knowledge.

Q. 19. Not to your knowledge?

A. No.

Q. 20. There would be notes, would there not, that was given to Mr. Wise, or given to the J. W. Calnan Company, signed or endorsed by Mr. Forrester?

A. Not to my knowledge.

Q. 21. Would there not be notes that were signed by J. W. Calnan Company to the order of Forrester or Callahan, which
89 were subsequently discounted for your benefit?

A. There might have been.

Q. 22. This giving of notes, one to the other, as you say, occupied the space of 20 years?

A. I should say so; yes.

Q. 23. And the notes that were given in each year were many?

A. Well, that I can't say.

Q. 24. Well, there were not few in number, there was quite a volume of them, weren't there?

A. Well, the merchandise notes would run about—average a note a month.

Q. 25. Well, then, there would be other notes?

A. Yes, at times; liable to be.

Q. 26. So that at times you would—well, I will not repeat it—

Mr. ELDRIDGE: I desire to offer these two notes.

Mr. BLANCHARD: At the present stage of proof I should object to them. There is no evidence there was any consideration for those notes at all as yet.

Mr. ELDRIDGE: I am just going to put them in for what they are worth.

Q. 27. Excuse me, I didn't ask about any endorsement from Doherty; that is your endorsement on the back, Henry A. Doherty?

A. Yes.

Q. 28. And that is J. W. Calnan Company, John P. Wise, Treas.?

A. Yes, sir.

Q. 29. And John P. Wise?

A. Yes, sir.

Q. 30. And that is true as to both of them?

A. Yes, sir.

Mr. ELDREDGE: I offer these notes, dated Feb. 21, 1908, one on three, one on four months, marked Exhibits 19 and 20.

Mr. BLANCHARD: It does not seem to me they are material or competent, without showing there is any consideration for them.

The REFEREE: I think they are.

Cross-examination.

(By Mr. BLANCHARD:)

X Q. 31. Mr. Doherty, were those notes given for any consideration?

A. No; accommodation notes to Mr. Wise.

X Q. 32. And were they made to the order of J. W. Calnan Company by his direction?

A. Yes, sir.

90 X Q. 33. Did you ever hear from them afterward?

A. Never.

X Q. 34. Were most of the note transactions that you have spoken of in reply to Mr. Eldredge's questions notes direct to Mr. Wise for his accommodation?

A. Yes; I should say about—there was an equal amount of notes by us. If they wanted an accommodation, he came to me, and I gave it, and if I wanted any I went to Mr. Wise and got them.

The REFEREE: In other words, you exchanged accommodation notes?

A. Yes, sir.

X Q. 35. And these were two you gave him without any consideration whatever?

A. Yes, sir.

Mr. ELDREDGE: Well, now.

Mr. BLANCHARD: He is your witness.

X Q. 36. Now, Mr. Doherty, how long have you known Mr. Wise?

A. I should say 25 or 30 years.

X Q. 37. And you knew him at the time when he was in another place of business than the place of business 321 Tremont Street?

A. Yes.

X Q. 38. And how long is it since he bought that place, do you know?

A. Well, I could not say.

X Q. 39. Well, approximately?

A. Well, I should say in the neighborhood of 15 years; I am not positive.

X Q. 40. How intimately had you known Mr. Wise?

A. Very intimately.

X Q. 41. At the time of the formation of this corporation, J. W. Calnan Company, had you known of it?

A. No; I did not.

X Q. 42. How long after it was formed, did you learn of its existence?

A. Well, my first knowledge, I think, was when we were billing the goods to him, J. W. Calnan & Company.

X Q. 43. After it was formed?

A. Yes.

X Q. 44. Did you have any talk with Mr. Wise at that time about changing the account?

A. No.

X Q. 45. Did you have any talk with anybody about the account being changed?

A. No; I did not.

91 X Q. 46. Did you sell, so far as you know, all the liquors that went to that place—to the place of J. W. Calnan Company?

A. No; we did not sell all.

X Q. 47. Do you know of any business that the J. W. Calnan Company had other than the liquor business conducted at the corner of Pleasant and Tremont Street?

A. Not to my knowledge.

Mr. BLANCHARD: That is all.

Mr. ELDRIDGE: No questions.

Mr. BLANCHARD: I have nothing further to offer, you—Honor, in support of the petition.

Mr. ELDRIDGE: There is one thing I want to say. I don't know whether my brother will admit it or not. I don't know that it is necessary. The Mechanics Trust Company have withdrawn its intervening petition.

Mr. BLANCHARD: I don't know, once having been a petitioner, they can withdraw without the assent of the other petitioners.

Mr. ELDRIDGE: I desire to show and prove, and can prove, if material, that the Mechanics Trust Company has parted with all of its claims. It was a claim against the J. W. Calnan Company, this Mr. Callahan here and John P. Wise; and that claim has been sold by the Mechanics Trust Company, so that it is now no longer a creditor. Now, if my brother will admit it, well and good, otherwise I have got to get the time to summon in someone to show it. Unfortunately I have not got the assignment of the claim, I mean the paper, judgment. I thought I had it, and in making search I find I have not. Suppose I make my offer of proof. I offer to prove that it appears of record that the Mechanics Trust Company alleged that it was a creditor of the respondent, and that it had a judgment against—a certificate of judgment issued from the municipal court of the city of Boston against this respondent, J. W. Calnan Company, and this Mr. Callahan—

Mr. BLANCHARD: That is a record. I understood he was to make

an offer of proof. Now he is stating the contents of a record, which is not an offer of proof.

The REFEREE: He has a right to refer to the record.

Mr. BLANCHARD: As I understand, he is making an offer of proof. His offer of proof, as I understand, could only state what the witness would state if he were on the stand.

Mr. ELDREDGE: It appears that the Mechanics Trust Company has intervened, alleges that it has a proof of claim against the respondent in the form of a judgment issued from the municipal court of the city of Boston, on Sept. 25, 1908; and it has appeared here by a certificate of that judgment which has been introduced in evidence, which I do not find among the papers, that that judgment ran against this respondent, John P. Wise, and this Mr. Callahan, who has testified, John T. Callahan, who has already testified; and since that time the Mechanics Trust Company has withdrawn, filed a withdrawal, of its intervening petition, which appears of record here, and I offer to prove that since the filing of this intervening petition, Nov. 25, 1908, and before the withdrawal of that intervening petition, that the Mechanics Trust Company by an assignment, under seal, signed by its treasurer, assigned that judgment, and all of its rights thereunder as against John T. Callahan, John P. Wise and the respondent J. W. Calnan Company to Sarah V. Wise, of Lynn, on payment of about \$1038, and that the Mechanics Trust Company no longer has any claim against the respondent.

Mr. BLANCHARD: That is objected to. I mean to say that if the evidence were presented as counsel states in his offer of proof, I would object, and ask the court now to rule that it would not be admissible.

The REFEREE: Who bought the claim?

Mr. ELDREDGE: Sarah V. Wise.

The REFEREE: Who furnished the consideration?

Mr. ELDREDGE: Sarah V. Wise; and no part of the consideration was furnished by the J. W. Calnan Company.

The REFEREE: You may put it in.

Mr. BLANCHARD: Your Honor will save me an exception. We may take it as though that were in. I should not make any contest.

[Recess.]

Afternoon Session.

HIRAM M. BURTON (sworn).

[Judgment of Mechanics Trust Company offered and marked "Exhibit 21." Check of C. F. Eldredge offered and marked "Exhibit 22."]

Cross-examination.

(By Mr. BLANCHARD:)

X Q. 1. Your name is——

A. Hiram M. Burton.

X Q. 2. You are an attorney at law?

A. Yes.

93 X Q. 3. Did you file this petition to intervene in these proceedings on behalf of the Mechanics Trust Company?

A. I did.

X Q. 4. And have since filed a petition to withdraw?

A. I did.

X Q. 5. Didn't you send a young man from your office to see me about this case since the last hearing?

A. No, his talk, I think, with you was before.

X Q. 6. Are you quite sure?

A. Quite clear, yes, because I had not been in touch with you. I heard of this petition—

X Q. 7. I am not speaking about the petition, sir. I am speaking about a time subsequent; if there was any time when you directed him to come to my office?

A. Mr. Cunniff. I told him, I think—

X Q. 8. Pardon me—I haven't asked what you told him yet. I am trying to fix the time, if I may.

A. I am just trying to fix that in my mind. I told him to go to your office before the hearing; yes, before the hearing you had here, and I think I told him after that to go to your office, or go to see you.

X Q. 9. On the proposition of continuing it until some four or five or six weeks?

A. No, I don't think I had any talk with him about that, because that was a matter I had to do with myself.

X Q. 10. Is he in your office now, Mr. Burton?

A. He was not when I came out.

X Q. 11. If he is there when you return, will you send him here?

A. Sure, I will be glad to.

X Q. 12. Now, Mr. Burton, you don't know where this money came from that went to pay that?

A. This money came from Mr. Eldredge.

X Q. 13. Aside from the fact it came directly to you from Mr. Eldredge, you don't know where it came from, do you?

A. No; only we made an assignment of our claim to Miss Wise, or Mrs. Wise, I don't know which.

X Q. 14. Miss Wise is a sister of John P. Wise, so far as you know?

A. I think so; a sister or cousin.

X Q. 15. Were you not told she was a sister?

94 A. No; I don't think I was before told that, but I simply got that out of my own investigation. She was either a sister or cousin; I don't know which. I have been looking up some of the John P. Wise transactions, etc.

X Q. 16. Do you recall my asking you to have the treasurer of the Mechanics Trust Company see the treasurer of the First National Bank?

A. Oh, yes.

X Q. 17. Do you recall when that was?

A. That was after the first hearing and before the next.

X Q. 18. Well, this assignment was made before the next hearing, wasn't it?

A. Yes; but it was before this assignment was made.

X Q. 19. But while you were negotiating for it?

A. I don't know, because I was really surprised to get my money.

X Q. 20. Do you mean to say, Mr. Burton, that you had not talked with me about your getting your money on this, and me getting mine?

A. Why the thing never came into my mind; how do you mean?

X Q. 21. Didn't you say that to me?

A. What?

X Q. 22. If we postponed the hearing for a matter of four weeks, that undoubtedly you would get your account fixed up and I would get mine?

A. Absolutely no. I am surprised, Mr. Blanchard, you would say such a thing to me. I don't like the insinuations; I won't have it.

X Q. 23. I will not say it is an insinuation; it is a question.

A. Absolutely, no.

The REFEREE: Please answer the question.

The WITNESS: Pardon me, your Honor; when a member of the bar puts a thing up to me, I think I have—I ought to have a chance to make myself right, because I do not like to have those things thrown at me; that is all.

The REFEREE: He has asked a question, Mr. Burton; I wish you would answer it. That is all you need to say about it.

A. I don't like to have things like that thrown out to me, because I don't do business that way.

X Q. 24. Are you quite finished now?

A. Yes; I think so.

Mr. BLANCHARD: I think that is all.

Redirect examination.

(By Mr. ELDREDGE:)

Q. 25. Did I not say to you that Mr. Wise owed this judgment, and Mr. Wise was responsible for it?

95 Mr. BLANCHARD: That I object to.

Q. 26. And that he would try to see that it was paid?

Mr. BLANCHARD: That I object to. I admit counsel for the bankrupt personally saw Mr. Burton, and that he paid this check.

[Question read by stenographer.]

The REFEREE: What do you mean by "he"?

Mr. ELDREDGE: He—Wise—he is a judgment debtor.

The REFEREE: Can't you identify the time that you asked that question.

Q. 27. Shortly before this assignment?

The REFEREE: You may ask the question.

Mr. BLANCHARD: It is a question—bear in mind this is a witness produced by the respondent, and conversations occurring between counsel for the respondent and this witness does not seem to me to be competent. Those would be admissions and statements in inter-

est of the respondent; and, if your Honor were to admit them, he might manufacture all sorts of testimony, which would be competent and admissible. Statements against interest are, of course, admissible. Statements in favor of the respondent clearly could not be.

The REFEREE: I will allow you to put that one question.

A. You did; yes.

Q. 28. Is it not true that you had cited into the poor debtor court Mr. John T. Callahan on this judgment?

Mr. BLANCHARD: How can that be material?

A. Yes, sir.

The REFEREE: Yes; you may answer that question.

A. I did.

Q. 29. And had obtained a default or order of arrest?

A. I did.

Q. 30. And is it not true that you had also taken out a citation against John P. Wise personally?

A. I did, sir.

Q. 31. On this same judgment?

A. The same judgment.

Q. 32. And was endeavoring to have service made upon him?

A. I tried to.

Q. 33. And did I not say to you when I handed you the check that I had that morning received from Sarah V. Wise that sum of money?

Mr. BLANCHARD: I want your Honor to save my rights under all this testimony.

96

The REFEREE: Your exception will be saved.

Q. 34. From Sarah V. Wise, that money to buy that judgment?

A. It seems to me—yes, you received it from Mr. Wise's sister or cousin, I didn't know who it was. That was where the check had come from, Mr. Wise's sister or cousin had sent you the money and you were going to buy it, very much to my surprise.

Mr. ELDREDGE: That is all.

(By the REFEREE:)

Q. 34½. Did you take any steps under this execution or judgment against the J. W. Calnan Company?

A. Only in the bankruptcy proceedings. I intervened in the bankruptcy proceedings against J. W. Calnan Company wanting to protect all our rights that we had.

Recross-examination.

(By Mr. BLANCHARD:)

X Q. 35. It is a fact, isn't it, Mr. Burton, in any proceedings against Mr. Callahan, the citation that was served upon Mr. Callahan was returnable a different day from the citation that was issued from the court?

A. It happened to be that was an error of the sheriff's office.

X Q. 36. So that, as a matter of fact, your affidavit of arrest on that execution as against Mr. Callahan was valueless?

Mr. ELDREDGE: I object.

A. No.

Mr. ELDREDGE: That is a question of law.

The REFEREE: I don't think it is quite competent. That is an inference or conclusion of law. You brought out the fact.

Mr. BLANCHARD: Will my taking the stand prohibit me from arguing this case?

The REFEREE: No.

JOHN H. BLANCHARD (sworn).

Mr. BLANCHARD: I did have a conversation with Mr. Burton in which Mr. Burton—

Mr. ELDREDGE: Now, I am going to object to all this conversation.

The REFEREE: You may explain the testimony that has just been given if you desire.

Mr. ELDREDGE: All subject to my exception.

97 Mr. BLANCHARD: —in which Mr. Burton said to me that if I would postpone this hearing for four weeks that there was every prospect of an adjustment of his account and also my account, and that we would gain nothing by proceeding at that time, and there was every reason to believe that he could get Mr. Eldredge to induce his clients to settle both our accounts.

The REFEREE: Do you want to ask him any questions? Is that all?

Mr. ELDREDGE: That is all.

CLARENCE F. ELDREDGE (sworn).

Mr. ELDREDGE: I want to make a statement under oath, and I do not want to be debarred from continuing my argument.

I want to say that so far as any statements made by Mr. Blanchard are concerned that I never in any form of words, or in any way, said to Mr. Burton, or to any other man, that by a continuance the money would be paid on Mr. Burton's account or Mr. Blanchard's account.

Mr. BLANCHARD: I will ask to have that all stricken out, your Honor, because mine went to the denial of the statement made by the witness, and this has no bearing whatever at all.

The REFEREE: I do not see that that is at all responsive, or in answer to what Mr. Burton has testified to. He testified to a conversation between himself and Mr. Blanchard. Your denial of it has nothing to do with it.

The WITNESS: I haven't finished all I desire to say.

The REFEREE: I assumed that was all.

The WITNESS: All upon that particular part. I did say to Mr. Burton that if the matter was continued for a few weeks I thought Mr. Wise would be able to come back here to testify. On the morning of Dec. 29, I received from Sarah V. Wise \$1058.75 to buy this

judgment. I thereupon asked Mr. Burton if he would sell the judgment. He said yes, and that afternoon I received an assignment of this judgment and execution, and bought the judgment in behalf of Sarah V. Wise, having previously stated sometime to Mr. Burton that Mr. John P. Wise was individually and personally responsible for this judgment, and he would endeavor to see if he could not get the money to get it paid.

Mr. BLANCHARD: I ask to have that all stricken out.

The REFEREE: I think that description of the purchase of the claim is perfectly proper and may stand. The part in denial of your statement may be stricken out.

Mr. ELDRIDGE: I desire now, resuming the position of counsel, I desire to take an exception as to striking out.

98 Recross-examination.

(By Mr. BLANCHARD:)

X Q. 37. Mr. Eldredge, have you seen Sarah V. Wise?

A. I never did to my knowledge.

X Q. 38. And through what medium did you get this money?

A. Through a gentleman that came to my office, and said that he came from Miss Wise, or Mrs. Wise—Miss Wise—and, thereupon, I gave her a receipt, of which I have a copy here.

X Q. 39. I haven't asked you about that. I asked you through whom you received it? Who was that gentleman?

A. A gentleman I never saw before, and I think his name was Bird or Burns, or some such name as that.

X Q. 40. You never had had any communication with Miss Wise, or Mrs. Wise, previous to that time?

A. I had not.

EXHIBIT 1.

Proper first name should be written in full.

Initials and abbreviations are not sufficient. A careful observance of this suggestion will help you and us.

(Acts of 1903, Chap. 437.)

SECTION 46. Every corporation shall annually, within thirty days after the date fixed in its by-laws for its annual meeting last preceding the date of such report, or within thirty days after the final adjournment of said meeting, but not more than three months after the date so fixed for said meeting, prepare a report of condition which shall be signed and sworn to by its president, treasurer, and at least a majority of its directors.

It is expected that this blank can be readily filled from the report of affairs made to the stockholders at their annual meeting.

Corporations with a capital of \$100,000 or more, must appoint an auditor to certify the certificate. (See chapter 437, section 47.)

The fee for filing this certificate is \$5.00, and should accompany the certificate. Checks should be made payable to the order of the Secretary of the Commonwealth.

We, John A. Sullivan, President, John P. Wise, Treasurer, and same being a majority of the directors of the J. W. Calnan Company in compliance with the provisions of Chapter 437 of the Acts of 1903, and all acts in amendment thereof and in addition thereto, do hereby certify

99 1. That the name of said corporation is J. W. Calnan Company.

2. That the location of its principal office in this Commonwealth is No. 321 Tremont Street (city or town), Boston and outside this Commonwealth, No. — Street (city or town), — State of —.

3. That the date of the last annual meeting was May 4 1908.

4. That the total amount of its authorized capital stock is \$10,000.00. The amount issued and outstanding at said date was \$10,000.00.

— shares preferred
500 shares common

The amount then paid { preferred
thereon was { common ten thousand dollars.

The said capital stock is divided into five hundred shares, of which — shares are preferred and 500 shares common, and the par value of said

stock is { preferred — dollars.
{ common twenty dollars.

5. That the assets and liabilities of the corporation, at the date of the end of its last fiscal year, were as follows, May 4, 1908:—

(Insert here date of end of fiscal year, which by Section 20 should be not more than ninety days prior to the date fixed in the by-laws for the annual meeting.)

<i>Assets.</i>		<i>Liabilities.</i>	
Real estate		Capital stock.....	\$10000.00
Machinery		Accounts payable..	1000.00
Merchandise including:		Funded indebted-	
Manufacturers, mer-		ness	
chandise, material		Floating indebted-	
and stock in process		ness	4000.00
Cash and debts receiv-		Surplus	
able	\$2000.00	Profit and loss....	
Patent rights			
Trade marks			
Good will	3000.00		
Profit and loss.....	10000.00		
	<hr/>		<hr/>
	\$15,000.00		\$15000.00

6. That the names and addresses of all the directors and officers of the corporation and the dates at which the term of office of each expires are as follows:—

100

Name of Office.	Names.	Addresses.	Expiration of Term of Office.
President,	John A. Sullivan,	321 Tremont Street.	Elective.
Treasurer,	John P. Wise,	321 Tremont Street.	Elective.
Clerk,	John MacGrelish,	321 Tremont Street.	Elective.
Directors,	John A. Sullivan,	321 Tremont Street.	Elective.
"	John P. Wise,	321 Tremont Street.	Elective.
"	John MacGrelish,	"	"

Elected at each annual meeting to serve until the next.

In witness whereof, we have hereunto signed our names, this fourth day of May in the year nineteen hundred and eight.

JOHN A. SULLIVAN,
Pres. & Director.
JOHN P. WISE,
Treas. & Director.

MAY 4, 1908.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

Then personally appeared the above-named John A. Sullivan and John P. Wise, the President and Treasurer, same being a majority of the Directors of the J. W. Calnan Company, and severally made oath that the foregoing certificate, by them subscribed, is true to the best of their knowledge and belief.

Before me,

JOHN W. CONVERSE,
Notary Public.

If out of Massachusetts, oath may be taken before a commissioner for Massachusetts, or notary public; if within Massachusetts, before a notary public or justice of the peace.

[Indorsed.]

(Write nothing below.)

J. W. Calnan Company.

Fee \$5.00 paid.

Certificate of Condition.

(Acts of 1903, Chap. 437, Sect. 45.)

Filed in the office of the Secretary of the Commonwealth, July 27th, 1908.

89

I hereby approve the within certificate, this 27th day of July,
A. D. nineteen hundred and eight.

WILLIAM D. T. TREFRY,
Commissioners of Corporations.

Received
Jul. 27, 1908,
Corporation Division,
Secretary's Office.

Commissioner of
Jul. 13, 1908,
Corporations.

Commissioner of
Jun. 9, 1908.
Corporations.

101

THE COMMONWEALTH OF MASSACHUSETTS,
OFFICE OF THE SECRETARY,
BOSTON, Nov. 27, 1908.

A true copy.

Witness the Great Seal of the Commonwealth.

[SEAL.]

WM. M. OLIN,
Secretary of the Commonwealth.
P. F. J. C.

EXHIBIT 2.

Accompanying this statement you will find a blank form for a report of the corrections of the account as rendered. Please examine this statement immediately on receipt and render your report thereon, whether you find any difference or not, so that The First National Bank of Boston may know definitely whether your books agree with theirs.

Apr. 1, 1908-July 31, 1908, Inclusive.

J. D. Calnan Co. in Account with The First National Bank of
Boston.

DEBIT.			CREDIT.		
190-			190-		
Apr. 1	check	500.	Apr. 1	balance	271.54
27	"	23.77	1	dis	495.83
		205.	3		100.
		112.12			125.
		250.	5		150.
28		16.95	8		125.
		4.80	10		125.
		77.	13		150.
		170.	15		125.
29		22.33	17		125.
		44.90	21		150.
		22.50	23		150.
		19.22			
30		35.79			
		4.64			
		1.25			
May 1	bal.	582.10			
		<hr/> 2092.37			<hr/> 2092.37

102

May	1	ck.	9.
	4		12.50
	4		30.78
	11		50.
			135.
	12		114.
	15		220.
	16		22.75
	19		9.10
			1.28
			5.40
	20		15.38
			5.
			22.96
	22		500.
	25		168.84
	26		21.45
	27		250.
June	1	bal.	349.16

1942.60

June	1	ck.	15.85
	8		14.40
	9		159.43
	9		225.
	10		16.75
	11		181.
	18		3.
			221.
			16.92
	22		111.08
	23	tel.	2.06
			500.
			30.75
	24		250.
July	1	bal.	232.92

1980.16

July	2	bal.	50.
	10		4.
	14		54.75
			10.40
103			
	15		12.40
			260.
			10.
			11.44
	16		75.
			17.96

May	1	bal.	582.10
	5		150.
	7		150.
	11		231.
	13		136.50
	18		205.50
	22		228.
	25		102.
	28		157.50

June	1	bal.	1942.60
			349.16
	1		125.
	3		150.
	5		146.50
	8		125.
	10		140.
	12		100.
	15		104.50
	18		150.
	22		200.
	24		135.
	26		125.
	29		130.

July	1	bal.	1980.16
			232.92
	2		125.
	6		172.18
	9		125.
	10		106.
	13		100.
	15		125.
	20		284.
	22		100.
	27		202.

20	372.	30	100.
	238.	31	75.
22	6.64		
	3.75		
27	23.86		
	110.12		
28	9.80		
29	250.		
	12.42		
	6.88		
30	3.		
	5.		
Aug. 1 bal.	199.68		
	<u>1747.10</u>		<u>1747.10</u>

EXHIBIT 3.

NOVEMBER 6, 1908.

M. H. Curley, Esq.,

DEAR SIR: Checking up your bills, we note your last one is made J. W. Calnan Co., instead of J. W. Calnan & Co.

Will you kindly correct with new bill and continue to bill your goods in future as you have in the past.

Yours respectfully,

J. W. CALNAN & CO.,
321 Tremont St., Boston.

EXHIBIT 4.

BOSTON, MASS., Nov. 11.

M. H. Curley, Esq.,

DEAR SIR: We have yours of the 10th inst., with corrected invoice and thank you. Noting what you say in re last two lots being billed J. W. Calnan Co., must remind you that they are not so billed according to the bills before us, only for one lot did we ever receive a bill written that way and same is the one just now corrected.

104 Need hardly say we have no very elaborate system of book-keeping and depend largely on the way our bills read, but from all data at hand in regard to various invoices being paid by J. W. Calnan Co. checks, only one was and one may be paid in National Bank notes, in which case, you will hardly bill the United States Government.

Again thanking you for your prompt attention and assuring you of our high esteem, we are,

Very truly yours,

S.

J. W. CALNAN & CO.,
321 Tremont St., Boston.

EXHIBIT 5.

\$373.33/100

BOSTON, Nov. 23, 1907.

Six months after date we promise to pay to the order of M. Doherty & Co. three hundred & seventy-three & 33/100 Dollars at any bank in Boston.

Value received.

No. — Due May 23/08.

J. W. CALNAN COMPANY,
JOHN P. WISE, *Treas.*,
321 Tremont St.

[Indorsed.]
M. Doherty & Co.
192 Kneeland.
Henry A. Doherty,
192 Kneeland.

[Across the face appears the following:]

P. N. P. June 23, 1908.

L. B. Not. Pub. Fees 1.56.

[Attached to the foregoing is the following:]

Lloyd Briggs, Notary Public. U. S. Passports.

COMMONWEALTH OF MASSACHUSETTS.

COUNTY OF SUFFOLK,
City of Boston, ss:

On this twenty-third day of June in the year of our Lord one thousand nine hundred and eight (1908), I, Lloyd Briggs, notary public, duly appointed and qualified for the Commonwealth
105 of Massachusetts, practising in the city of Boston, at request of the Treasurer of the United States Trust Company of Boston, went with the original note which is hereto annexed, the time therein limited and grace having fully elapsed, and demanded payment thereof at the First National Bank and was answered by the teller "No orders to pay." The note remaining unpaid, I duly and officially notified the promisors and endorsers, of said dishonor, by written notices sent each per mail to their offices in Boston, Mass. (postage prepaid), in said notices, requiring payment.

Whereof, I, the said notary, by request, as aforesaid, have protested, and by these presents do solemnly protest against the drawers of said note and all others concerned therein, for exchange, re-exchange, and all costs, charges, damages and interest, suffered and sustained, or to be suffered and sustained, by reason or in consequence of the non-payment thereof.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, the day and year first above written.

[SEAL.]

LLOYD BRIGGS,
Notary Public, 35 Congress Street.

Fees.

Protesting for non-payment.....	\$1 50
Postage, travel and expense.....	06
	<hr/> \$1 56

[Attached to the foregoing is also the following:]

United States Trust Company.
28 & 32 Court Street, Cor. Court Square.

Safe Deposit Department.
Edward H. Burdett, Supt.

A. C. Ratshesky, President.
James T. Phelps, Vice-Prest.
Albert E. Pillsbury, Vice-Prest.
I. A. Ratshesky, Treasurer.
Wm. H. Hidden, Jr., Actuary.
Henry P. Tilden, Ass't Sec'y.

BOSTON, MASS., 6/23/08.

M. Doherty & Co., 192 Kneeland St., City.

DEAR SIRs: We enclose herewith in payment for collection items stated below, our check No. — on — \$—
\$—

Respectfully yours,

WM. H. HIDDEN, JR., *Actuary.*

Date of Letter.	Name.	Due.	Amount.
-----------------	-------	------	---------

We return unpaid note signed by J. W. Calnan Co. your favor 11/23/07 @ 6 mos. due 5/23/08 for 373.33.

We charge your account pro fees..... 1 56

106

EXHIBIT 6.

United States Trust Co., Boston.

38496.

\$340.53/100.

Boston, Dec. 20, 1907.

Six months after date we promise to pay to the order of M. Doherty & Co., three hundred & forty 53/100 dollars at any bank in Boston.
Value received.

J. W. CALNAN COMPANY,
JOHN P. WISE, *Treas.*,

321 Tremont St.

No. 44273 Due —.

[Across the face appears the following:]

P. N. P. June 23, 1908. L. B. Not. Pub. fees, 1.56.

[Indorsed.]

M. Doherty & Co.,
192 Kneeland.
Henry A. Doherty,
192 Kneeland.

[Attached to the foregoing is also the following:]

Collection.
Special instructions.
No attention to notice.
The First National Bank Boston, Mass.

[Attached to the foregoing is also the following:]

Lloyd Briggs, Notary Public. U. S. Passports.

COMMONWEALTH OF MASSACHUSETTS.

COUNTY OF SUFFOLK,
City of Boston, ss:

On this twenty-third day of June in the year of our Lord one thousand nine hundred and eight (1908), I Lloyd Briggs, notary public, duly appointed and qualified for the Commonwealth of Massachusetts, practising in the city of Boston, at request of the Treasurer of the United States Trust Company of Boston, went with the original note which is hereto annexed, the time therein limited and grace having fully elapsed, and demanded payment thereof at the First National Bank, and was answered by the teller "No orders to pay."

The note remaining unpaid, I duly and officially notified the promisors and endorsers, of said dishonor, by written notices sent each per mail to their offices in Boston, Mass. (postage prepaid), — in said notices, requiring payment.

Wherefore, I, the said notary, by request, as aforesaid, have protested, and by these presents do solemnly protest, against the drawers of said note and all others concerned therein, for exchange, re-exchange, and all costs, charges, damages, and interest, suffered and sustained, or to be suffered and sustained, by reason or in consequence of the non-payment thereof.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, the day and year first above written.

[SEAL.]

LLOYD BRIGGS,
Notary Public, 35 Congress Street.

Fees.

Protesting for non-payment.....	1 50
Postage, travel and expense.....	06

\$1 56

EXHIBIT 7.

\$341.89/100

BOSTON, *Feb. 24, 1908.*

Six months after date we promise to pay to the order of M. Doherty & Co. three hundred & forty-one & 89/100 dollars at any bank in Boston.

Value received.

No. — Due —

J. W. CALNAN COMPANY,
JOHN P. WISE,
Treas., 321 Tremont Street.

[Across the face appears the following:]

P. N. P. Aug. 24, 1908 L. B. Not. Pub. fees 1.54

[Indorsed.]

M. Doherty & Co.
192 Kneeland
Henry A. Doherty
192 Kneeland

108 [Attached to the foregoing is the following:]

Lloyd Briggs, Notary Public.

U. S. Passports.

COMMONWEALTH OF MASSACHUSETTS.

COUNTY OF SUFFOLK,
City of Boston, ss:

On this 24th day of Aug. in the year of our Lord one thousand nine hundred and eight, I, Lloyd Briggs, notary public, duly appointed and qualified for the Commonwealth of Massachusetts, practising in the city of Boston, at request of the Treas. of the United States Trust Company of Boston, went with the original note which is hereto annexed, the time therein limited and grace having fully elapsed, and demanded payment thereof at the State National Bank and was answered by the teller "no funds."

The note remaining unpaid, I duly and officially notified the endorser, of said dishonor, by written notices sent each per mail to their offices in Boston, Mass. (postage prepaid) in said notices, requiring payment.

Wherefore I, the said notary, by request, as aforesaid, have protested, and by these presents do solemnly protest, against the drawer of said note and all others concerned therein, for exchange, re-

exchange, and all costs, charges, damages, and interest, suffered and sustained, or to be suffered and sustained, by reason or in consequence of the non-payment thereof.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, the day and year first above written.

[SEAL.]

LLOYD BRIGGS,
Notary Public, 35 Congress Street.

Fees.

Protesting for non-payment.....	1 50
Postage, travel and expense.....	04
	<hr/>
	\$1 54

EXHIBIT 8.

\$285.35

Boston, Jan. 20, 1908.

Six months after date we promise to pay to the order of M Doherty & Co. two hundred & eighty five & 35/100 dollars at any bank in Boston.

Value received.

No. — Due —

J. W. CALNAN COMPANY,
JOHN P. WISE,
Treas., 321 Tremont St.

109 [Across the face appears the following:]

P. N. P. July 20, 1908 L. B. Not. Pub. fees 1.54

[Indorsed.]

M. Doherty & Co.
192 Kneeland
Henry A. Doherty
192 Kneeland

[Attached to the foregoing is the following:]

Lloyd Briggs, Notary Public.

U. S. Passports.

COMMONWEALTH OF MASSACHUSETTS.

COUNTY OF SUFFOLK,

City of Boston, ss:

On this 20th day of July in the year of our Lord one thousand nine hundred and eight, I, Lloyd Briggs, notary public, duly appointed and qualified for the Commonwealth of Massachusetts, practising in the city of Boston, at request of the Treas. of the United States Trust Company of Boston, went with the original note which is hereto, annexed, the time therein limited and grace having

fully elapsed, and demanded payment thereof at the Winthrop National Bank and was answered by the teller "No funds."

The note remaining unpaid, I duly and officially notified the endorsers, of said dishonor, by written notices sent each per mail to their offices in Boston, Mass. (postage prepaid), in said notices, requiring payment.

Wherefore, I, the said notary, by request, as aforesaid, have protested, and by these presents do solemnly protest, against the drawer of said note and all others concerned therein, for exchange, re-exchange, and all costs, charges, damages, and interest, suffered and sustained, or to be suffered and sustained, by reason or in consequence of the non-payment thereof.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, the day and year first above written.

[SEAL.]

LLOYD BRIGGS,

Notary Public, 35 Congress Street.

Fees.

Protesting for non-payment.....	1 50
Postage, travel and expense.....	04
	<hr/>
	\$1 54

110

EXHIBIT 9.

\$272.39/100.

Boston, Apr. 21, 1908.

Six months after date we promise to pay to the order of M. Doherty & Co. two hundred seventy two & 39/100 dollars at any bank in Boston.

Vale received.

No. — Due —

J. W. CALNAN COMPANY.
JOHN P. WISE, *Treas.*

[Across the face appears the following:]

P. N. P. Oct. 21, 1908. L. B. Not. Pub. fees 1.54.

[Indorsed.]

M. Doherty & Co.
192 Kneeland
Henry A. Doherty
192 Kneeland

[Attached to the foregoing is the following:]

Lloyd Briggs, Notary Public.

U. S. Passports.

COMMONWEALTH OF MASSACHUSETTS.

COUNTY OF SUFFOLK,

City of Boston, ss:

On this 21 day of Octo. in the year of our Lord one thousand nine hundred and eight, I, Lloyd Briggs, Notary Public, duly ap-

pointed and qualified for the Commonwealth of Massachusetts, practicing in the city of Boston, at request of the Treas. of the United States Trust Co. of Boston, went with the original note which is hereto annexed, the time therein limited and grace having fully elapsed, and demanded payment thereof at the Winthrop National Bank and was answered by the teller "No funds."

The note remaining unpaid, I duly and officially notified the endorsers, of said dishonor, by written notices sent each per mail to their offices in Boston (postage prepaid), in said notices, requiring payment.

Wherefore, I, the said notary, by request, as aforesaid, have protested, and by these presents do solemnly protest against the drawer of said note and all others concerned therein, for exchange, 111 re-exchange, and all costs, charges, damages and interest, suffered and sustained, or to be suffered and sustained, by reason or in consequence of the non-payment thereof.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, the day and year first above written.

[SEAL.]

LLOYD BRIGGS,
Notary Public, 35 Congress Street.

Fees.

Protesting for non-payment.....	\$1 50
Postage, travel and expense.....	04
	<hr/>
	\$1 54

EXHIBIT 10.

Know all men by these presents, that I, John A. Sullivan of Boston, County of Suffolk and Commonwealth of Massachusetts, in consideration of nine thousand dollars paid by Reuter & Company a corporation duly established under the laws of New Jersey and having a usual place of business at said Boston, the receipt whereof is hereby acknowledged, do hereby grant, sell, transfer and deliver unto the said Reuter and Company the following goods and chattels, namely: two counters, two back bars, two wall cases, two electric signs, two cash registers, nine mirrors, about five dozen copper measures and tunnels two double sinks with drainers, pipes, faucets and standards, about two thousand bottles, one hundred jugs, one hundred packing boxes, labels, tables, chairs, two clocks, two hot-water heaters, about twenty barrels of domestic liquors, about five casks imported liquors, five thousand cigars, one furnace, pictures, all and singular and all the appurtenances, all stock, appliances and all interests of every nature that I may possess now in use or that may be placed upon the premises at 321 Tremont Street and 98 Pleasant Street in said Boston. And also all right, title and interest that I or anyone for me may have in a liquor license known as first and fourth class retail issued by the Licensing Board of the city of Boston in the name of J. W. Calnan & Co., now in force or that may be in force at any time until the debt hereinafter described

is liquidated in so far as the same may be conveyed with approval of said Licensing Board or their successors. It is understood that the mortgagor herein may use the stock of liquors and cigars in the ordinary course of business, it being understood, however, that he shall always keep said stock of liquors and cigars up to the value of at least two thousand dollars (\$2000) so as not materially to diminish the security hereunder. To have and to hold all

- 112 and singular the said goods and chattels to the said Reuter and Company and its successors and assigns, to their own use and behoof forever. And I hereby covenant with the vendee that I am the lawful owner of the said goods and chattels; that they are free from all incumbrances; that I have good right to sell the same as aforesaid; and that I will warrant and defend the same against the lawful claims and demands of all persons. Provided nevertheless that if I or my executors, administrators, or assigns, shall pay unto the vendee, or its successors or assigns, the sum of nine thousand dollars in three years from this date, with interest as stated in a note of even date signed by me, and until such payment shall keep the said goods and chattels insured against fire in a sum not less than five thousand dollars for the benefit of the vendee and its successors and assigns in such form and in such insurance companies as they shall approve; shall not waste or destroy the said goods and chattels, nor suffer them or any part thereof to be attached on mesne process, and shall not, except with the consent in writing of the vendee or its representatives, attempt to sell or to remove from the aforesaid premises the same or any part thereof,—and shall use and sell to an amount satisfactory to the grantee, but not exclusively, the products of Reuter & Company and A. J. Houghton Company, corporations established under the laws of New Jersey, each having a usual place of business in the city of Boston,—then this deed, as also the aforesaid note, shall be void. But upon any default in the performance or observance of the foregoing condition, the vendee, or its successors or assigns, may sell the said goods and chattels at public auction, first giving thirty days' notice in writing of the time and place of sale to it or its representatives, or publishing such notice once a week for three successive weeks in some one newspaper published in said Boston, and out of the money arising from such sale the vendee, or its representative shall be entitled to retain all sums then secured by this mortgage, whether then or thereafter payable, including all costs, charges and expenses incurred or sustained by it or them in relation to the said property, or to discharge any claims or liens of third persons affecting the same; rendering the surplus, if any, to me or my executors, administrators or assigns. And it is agreed that the vendee or its successors or assigns, or any person or persons in their behalf, may purchase at any sale made as aforesaid; and that until default in the performance or observance of the condition of this deed I and my executors, administrators, and assigns, may retain possession of the above mortgaged property and may use and enjoy the same,
- 113 but after such default, the vendee or those claiming under it may take immediate possession of said property and for that

purpose may, so far as I can give authority therefor, enter upon any premises on which said property or any part thereof may be situated, and remove the same therefrom. In witness whereof we the said John A. Sullivan, and John P. Wise, the latter signing these presents in token of his assent to all the conditions of said mortgage, hereunto set our hand and seals this third day of June in the year one thousand nine hundred and seven.

JOHN A. SULLIVAN. [SEAL.]
JOHN P. WISE. [SEAL.]

Signed and sealed in presence of
EDWARD H. RUBY, *For Both.*

JUNE 4, 1907.

10 & 50 min. a. m. Rec'd, ent'd and examined.

JOHN T. PRIEST,
Ass't City Clerk.

CITY OF BOSTON, *November 24, 1908.*

A true copy from records of Mortgages of Personal Property,
Book 1109, page 694.

Attest:

W. J. DOYLE,
Ass't City Clerk.

EXHIBIT 11.

Know all men by these presents, that I, John A. Sullivan, of Boston, County of Suffolk and Commonwealth of Massachusetts in consideration of nine thousand dollars paid by John P. Wise of said Boston the receipt whereof is hereby acknowledged, do hereby grant, sell, transfer, and deliver unto the said Wise the following goods and chattels, namely: two counters, two back bars, two wall cases, two electric signs, two cash registers, nine mirrors, about five dozen copper measures, and tunnels, two double sinks with drainers, pipes, faucets and standards, about two thousand bottles, one hundred jugs, one hundred packing boxes, labels, tables, chairs, two clocks, two hot-water heaters, about twenty barrels of domestic liquors, about five casks imported liquors, five thousand cigars, one furnace, pictures all and singular and all the appurtenances, all stock, appliances, and all interests of every nature that I may possess now in use or that may be placed upon the premises at 321 Tremont Street and 98 Pleasant Street in said Boston. And also all right, title and interest that I or anyone for me may have in
114 a liquor license known as first and fourth class retail issued by the Licensing Board of the city of Boston in the name of J. W. Calnan and Co. now in force or that may be in force at any time until the debt hereinafter described is liquidated in so far as the same may be conveyed with approval of said Licensing Board

or their successors. The above is sold subject to a mortgage to Rueter and Company for nine thousand dollars. It is understood that the mortgagor herein may use the stock of liquors and cigars in the ordinary course of business, it being understood, however, that he shall always keep said stock of liquors and cigars up to the value of at least two thousand dollars (\$2000) so as not materially to diminish the security hereunder. To have and to hold all and singular the said goods and chattels to the said Wise and his executors, administrators, and assigns, to their own use and behoof forever. And I hereby covenant with the vendee that I am the lawful owner of the said goods and chattels; that they are free from all incumbrances, except as before described; that I have good right to sell the same as aforesaid; and that I will warrant and defend the same against the lawful claims and demands of all persons except the aforesaid Rueter and Company, provided nevertheless that if I, or my executors, administrators, or assigns, shall pay unto the vendee, or his executors, administrators or assigns, the sum of nine thousand dollars in two years from this date * as stated in several notes of even date signed by * and until such payment shall keep the said goods and chattels insured against fire in a sum not less than * dollars for the benefit of the vendee and his executors, administrators, and assigns, in such form and in such insurance companies as they shall approve; shall not waste or destroy the said goods and chattels, nor suffer them or any part thereof to be attached on mesne process, and shall not, except with the consent in writing of the vendee or his representatives, attempt * sell or to remove from the aforesaid premises the same or any part thereof,—then this deed, as also the aforesaid note, shall be void. But upon any default in the performance or observance of the foregoing condition, the vendee, or his executors, administrators, or assigns, may sell the said goods and chattels at public auction, first giving thirty days notice in writing of the time and place of sale to him or his representatives, or publishing such notice once a week for three successive weeks in some one newspaper published in said Boston. And out of the money arising from such sale the vendee, or his representatives shall be entitled to retain all sums then secured by this mortgage, whether then or thereafter payable, including all costs, charges and expenses incurred or sustained by him or them in relation to the said property, or to discharge any claims
115 or liens of third persons affecting the same; rendering the surplus, if any, to me or my executors, administrators, or assigns. And it is agreed that the vendee, or his executors, administrators, or assigns, or any person or persons in their behalf, may purchase at any sale made as aforesaid; and that until default in the performance or observance of the conditions of this deed I and my executors, administrators, and assigns may retain possession of the above mortgaged property, and may use and enjoy the same, but after such default, the vendee or those claiming under him may take immediate possession of said property, and for that purpose may, so far as I can give authority therefor, enter upon any premises on which said property or any part thereof may be situated,

and remove the same therefrom. In witness whereof, I, the said John A. Sullivan hereunto set my hand and seal this third day of June in the year one thousand nine hundred and seven.

JOHN A. SULLIVAN. [SEAL.]

Signed and sealed in presence of
EDWARD H. RUBY.

JUNE 5, 1907.

2 & 9 min. p. m. Rec'd, and ent'd and examined.

JOHN T. PRIEST,
Ass't City Clerk.

CITY OF BOSTON, November 24, 1908.

A true copy from Records and Mortgages of Personal Property,
Book 1109, Page 677.

Attest:

W. J. DOYLE,
Ass't City Clerk.

EXHIBIT 12.

Know all men by these presents, that I, John P. Wise, of Boston, County of Suffolk and Commonwealth of Massachusetts, mortgagee in a certain mortgage of personal property given by John A. Sullivan of said Boston to said John P. Wise dated June 3rd 1807 A. D. 1907, and recorded on the records of the City of Boston aforesaid with the records of mortgages of personal property, book 1109, page 677, in consideration of one dollar and other good and valuable considerations *dollars* paid by Bay State Realty Co., a corporation having its usual place of business in said Boston, the receipt whereof is hereby acknowledged, do hereby assign, transfer, and set over unto the said Bay State Realty Co. the said mortgage deed, the notes and claim thereby secured, and all my right, title, and interest in the personal property thereby conveyed.

In witness whereof, I hereunto set my hand and seal this first day of July A. D. 1907.

[SEAL.]

JOHN P. WISE.

Signed and sealed in presence of*

— — —

JULY 11, 1907.

1 & 30 min. p. m. Rec'd ent'd, and examined.

JOHN T. PRIEST,
Ass't City Clerk.

CITY OF BOSTON, November 24, 1908.

A true copy from Records of Mortgages of Personal Property,
Book 1111, page 330.

Attest:

W. J. DOYLE,
Ass't City Clerk.

EXHIBIT 13.

BOSTON, Jan. 1, 1907.

M. Murray to J. W. Calnan, Dr.

Terms: —.

Mdse.	46.85 @	\$1.65,	79.30
		J. P. WISE.	
		J. A. S.	

Mattapan Deposit & Trust Company.

No. 231.

SOUTH BOSTON, MASS., Jan. 1, 1907.

Pay to the order of John P. Wise \$79.30 seventy-nine 30/100 dollars.

Collectible through Boston Clearing House.

MICHAEL MURRAY.

[Indorsed.]

John P. Wise.

Received payment through
Boston Clearing House
and theFirst National Bank;
Jan. 4, 1907.Prior endorsements guaranteed.
Mechanics Trust Company
S. A. Merrill, Treas.

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EXHIBIT 14.

FEB. 10.

FRIEND JOHN: I wish you would send that whiskey the boss would not like it if he knew I did not have it.

J. A. SULLIVAN.

[Indorsed.]

Boston
Feb. 10
9 P. M.
1908
Mass.Essex Street
Station.One cent
postage
stamp.

The space above is reserved for postmark.

Postal card.

The space below is for the address only.

M. Doherty & Co.
192 Kneeland St.
City.

EXHIBIT 15.

3.

We, Daniel L. Healy, President, John P. Wise, Treasurer, and John T. Callahan, Secretary, the same being a majority of the Directors of J. W. Calnan Company, in compliance with the requirements of the twentieth section of chapter one hundred and ten of the Revised Laws, do hereby certify that the following is a true copy of the agreement of association to constitute said corporation, with the names of the subscribers thereto:

"We, Whose names are hereto subscribed, do by this agreement, associate ourselves with the intention to constitute a corporation according to the provisions of the one hundred and tenth chapter of the Revised Laws of the Commonwealth of Massachusetts, and the Acts in amendment thereof and in addition thereto.

"The name by which the corporation shall be known is J. W. Calnan Company.

"The purpose for which the corporation is constituted is the importing, manufacturing, buying and selling of merchandise.

"The place within which the corporation is established or located is the city of Boston within said Commonwealth.

"The amount of its capital stock is ten thousand dollars. The par value of its shares is twenty dollars. The number of its shares is five hundred.

118 In witness whereof, we have hereunto set our hands, this first day of January in the year nineteen hundred and two.

"JOHN T. CALLAHAN.

"DANIEL L. HEALY.

"FRANK L. DUNNE.

"BENJAMIN POPE.

"JOHN P. WISE."

That the first meeting of the subscribers to said agreement was held on the eleventh day of January in the year nineteen hundred and two.

In witness whereof, we have hereunto signed our names, this eleventh day of January in the year nineteen hundred and two.

DANIEL L. HEALY, *Pres.*

JOHN P. WISE, *Treas.*

JOHN T. CALLAHAN, *Dir.*

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

JANUARY 11, 1902.

Then personally appeared the above-named Daniel L. Healy, John P. Wise, and John T. Callahan, and severally made oath that

the foregoing certificate, by them subscribed, is true to the best of their knowledge and belief.

Before me:

M. A. DIVVER,
Justice of the Peace.

In making the foregoing certificate, care should be taken—

1. To insert the full and exact name of the corporation, as adopted in the articles of agreement, in the proper places, without abbreviation or change.

2. To give an exact copy of the articles of agreement, with the names of all the subscribers thereto as they are subscribed, and not by substituting initials for full names.

3. In filling the blanks for date on the first page, to insert the date of agreement of association. The place for the date of this certificate is on the second page.

4. In case there have been adjournments of the first meeting, to add a statement of that fact after filling in the blanks on the second page with the date of the first meeting. The expressions, "and by adjournment on the — day of — in said year," or "and by successive adjournments on the — day of — and on the — day of —, both in said year," are sufficient for the purpose.

119 In the organization of a corporation there should be no instruction to a person to cast one ballot for the election of an officer. Subscribers should vote without dictation.

[Indorsed.]

3.

(Write nothing below.)

J. W. Calnan Company.

Fee \$5.00 paid.

Certificate of Organization.

(Full form.)

Revised Laws, Chap. 110, Sect. 20.

Filed in the office of the Secretary of the Commonwealth,

January 25, 1902.

Charter No. 9391.

I hereby certify that it appears upon an examination of the within written certificate and the records of the corporation duly submitted to my inspection, that the requirements of sections four to nineteen inclusive, of chapter one hundred and ten of the Revised Laws have been complied with, and I hereby approve said certificate, this twenty-fourth day of January, A. D. nineteen hundred and two.

WILLIAM D. T. TREFRY,
Commissioner of Corporations.

Recorded,
Vol. 146, p. 345.

Received
Jan. 25, 1902.
Corporation Division,
Secretary's Office.

Commissioner of
Jan.
24,
1902.
Corporations.

THE COMMONWEALTH OF MASSACHUSETTS,
OFFICE OF THE SECRETARY,
BOSTON, Jan. 8, 1909.

A true copy.

Witness the Great Seal of the Commonwealth.

[SEAL.]

WM. M. OLIN,
Secretary of the Commonwealth.
P. F. J. C.

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EXHIBIT 16.

We, Daniel L. Healy, President, John P. Wise, Treasurer, and John T. Callahan, Secretary, the same being a majority of the Directors of J. W. Calnan Company, in compliance with the provisions of sections forty-three and forty-four of chapter one hundred and ten of the Revised Laws, do hereby certify, that the whole amount of the capital stock of said corporation, namely, the sum of ten thousand dollars, has been paid in by the conveyance to the corporation of the following described property, at the valuation herein set against the items thereof, viz:—

Merchandise	\$2,000
Fixtures	1,500
Cash	6,500
	<hr/>
	\$10,000

In witness whereof, we have hereto signed our names, this eleventh day of January, in the year nineteen hundred and two.

JOHN T. CALLAHAN.
DANIEL L. HEALY.
JOHN P. WISE.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

BOSTON, Jan. 11, 1902.

Then personally appeared the above-named John T. Callahan, John P. Wise, Daniel L. Healy, and severally made oath that the foregoing certificate, by them subscribed, is true to the best of their knowledge and belief.

Before me,

M. A. DIVVER,
Justice of the Peace.

[Indorsed.]

[Write Nothing Below.]

J. W. Calnan Company.

Fee \$1.00 paid.

Certificate of Payment of Capital.

[In property.]

Revised Laws Chap. 110 Sects. 43 and 44.

Filed in the office of the Secretary of the Commonwealth,
January 25, 1902.

I hereby certify that I am satisfied that the valuation within given
is a fair and reasonable valuation of the property described,
121 and I hereby approve the within certificate this twenty-fourth
day of January, A. D. nineteen hundred and two.

WILLIAM D. T. TREFRY,
Commissioner of Corporations.

Recorded,
Vol. 127, p. 439.

Received
Jan. 25, 1902.
Corporation Division,
Secretary's Office.

Commissioner of
Jan.
24,
1902.
Corporations.

COMMONWEALTH OF MASSACHUSETTS,
OFFICE OF THE SECRETARY,
BOSTON, Jan. 8, 1909.

A true copy.

Witness the Great Seal of the Commonwealth.

[SEAL.]

WM. M. OLIN,
Secretary of the Commonwealth.
P. F. J. C.

Petition for Appeal.

[Filed May 21, 1909.]

UNITED STATES OF AMERICA:

In the District Court of the United States for the District of Massachusetts.

In Bankruptcy. No. 14061.

In the Matter of J. W. CALNAN COMPANY, Alleged Bankrupt.

To the Honorable the Judge of the United States District Court for the District of Massachusetts:

Respectfully represents J. W. Calnan Company, a corporation, which says that at a hearing before this Honorable Court on a petition filed against it, praying that it, said J. W. Calnan Company, be adjudged a bankrupt, this Honorable Court on the 122
thirteenth day of May, A. D. 1909, did adjudicate it a bankrupt, and from the decision of this Honorable Court it appeals and prays that its appeal may be allowed.

By Its Attorney, CLARENCE F. ELDREDGE.

Allowed May 21, 1909.

FREDERIC DODGE,
U. S. District Judge.

Assignment of Errors.

[Filed May 21, 1909.]

UNITED STATES OF AMERICA:

In the District Court of the United States for the District of Massachusetts.

In the Matter of J. W. CALNAN COMPANY, Alleged Bankrupt.

Now comes J. W. Calnan Company, after the decision of this Honorable Court, adjudicating it a bankrupt, on a petition filed against it, and files the following assignment of errors on which it will rely on its appeal:

First. That the court erred in adjudicating it a bankrupt.

Second. That the court erred in finding the Massachusetts Breweries Company was a creditor, with a valid provable claim against it.

Third. That the court erred in finding that the petitioner, Henry A. Doherty, was a creditor, having a valid provable claim against it.

Fourth. That the court erred in holding that there was a payment

made by the alleged bankrupt to a creditor, with an intent to prefer such creditor over its other creditors.

Fifth. That the court erred in holding or finding that there was a debt due from it to Michael H. Curley, for goods sold by him, which was paid so as to make it a preference.

Sixth. The court erred in finding that the payment of the sum of \$159.23 on June 8, 1908, to Michael H. Curley, was a payment of an antecedent debt due from this respondent.

123 Seventh. That the court erred in not finding that the payment made to Michael H. Curley on June 8, 1908, was in the regular course of business, and was not a preference, and was not made with intent to prefer him.

Eighth. That the court erred in finding that the goods sold by Curley were bought for use in the business theretofore carried on by the alleged bankrupt at the same place where these goods were delivered and used.

Ninth. That the court erred in finding in effect that the business carried on after June, 1907, was like the business previously carried on at the same place in the name of the respondent.

Tenth. That the court erred in finding that the business as carried on after June, 1907, was the business of John P. Wise, and that the payments made in June and August, 1908, for goods delivered by Curley, amounted to sales to the respondent corporation.

Eleventh. That the court erred in finding that the respondent was, or at least for many years last past had carried on the liquor business at No. 321 Tremont Street, Boston, Massachusetts.

Twelfth. The court erred in not finding that from and after June, 1907, the business and property at No. 321 Tremont Street, Boston, Massachusetts, belonged to John A. Sullivan, and that the respondent corporation had no interest therein, and did not buy any goods from Michael H. Curley, and the same was not paid for by this respondent.

Thirteenth. The court erred in not finding that the respondent had not committed any act of bankruptcy.

By Its Attorney, CLARENCE F. ELDREDGE.

Bond to Party on Appeal.

[Filed May 21, 1909.]

Know all men by these presents, that we, J. W. Calnan Company, a corporation existing under the laws of Massachusetts, as principal and American Bonding Company, of Baltimore, a corporation established by law, and have its usual place of business in Boston, Massachusetts, as surety, are held and firmly bound unto Henry A. Doherty, of Boston, Massachusetts, petitioner, and Mechanics Trust Company, a corporation established by law, and Massachusetts Breweries Company, a corporation, intervenors, in the full and just sum of two hundred and fifty dollars to be paid to the said Henry A. Doherty, Mechanics Trust Company and Massachusetts Breweries Company, their certain attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we

bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this twenty-first day of May, in the year of our Lord one thousand nine hundred and nine.

Whereas lately, at a District Court of the United States for the District of Massachusetts, in a suit in bankruptcy depending in said court, entitled J. W. Calnan Company, alleged bankrupt, a decree was entered adjudicating the said J. W. Calnan a bankrupt, and the said J. W. Calnan Company having obtained an appeal to remove said cause to the United States Circuit Court of Appeals for the First Circuit, to reverse the decree in the aforesaid suit, and a citation directed to the said Henry A. Doherty and Mechanics Trust Company and Massachusetts Breweries Company (intervenor), citing and admonishing them to be and appear in the said United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the nineteenth day of June, A. D. 1909.

Now, the condition of the above obligation is such, that if the said J. W. Calnan Company shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its appeal good, then the above obligation to be void; else to remain in full force and virtue.

J. W. CALNAN COMPANY. [SEAL.]

JOHN A. SULLIVAN, *President.*

AMERICAN BONDING COMPANY [SEAL.]

OF BALTIMORE,

By BERTRAM G. WATERS, *Vice-President.*

Attest:

A. A. DOHERTY,
Assistant Secretary.

Approved:

FREDERIC DODGE,
U. S. District Judge.

UNITED STATES OF AMERICA, ss:

The President of the United States to Henry A. Doherty, Massachusetts Breweries Company, a corporation organized under the laws of the State of Virginia, and Mechanics Trust Company, a corporation organized under the laws of the Commonwealth of Massachusetts, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the City of Boston, Massachusetts, on the nineteenth day of June next, pursuant to an appeal duly obtained from a decree of the District Court of the United States for the District of Massachusetts, wherein J. W. Calnan Company, a corporation organized under the laws of the Commonwealth of Massachusetts, is appellant, and you are ap-

pellets, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Frederic Dodge, Judge of the District Court of the United States for the District of Massachusetts, this twenty-first day of May, in the year of our Lord one thousand nine hundred and nine.

FREDERIC DODGE,
U. S. District Judge.

Acknowledgments of Service on Citation.

BOSTON, MASS., May 22, 1909.

Service of the within citation is hereby accepted.

MECHANICS TRUST CO.,
By H. M. BURTON, *Attorney.*
MASSACHUSETTS BREWERIES COMPANY,
By I. R. CLARK AND
G. F. ORDWAY,
Its Attorneys.
HENRY A. DOHERTY,
By JOHN H. BLANCHARD, *Attorney.*

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Clerk's Certificate.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I, Frank H. Mason, Clerk of the District Court of the United States for the District of Massachusetts, certify that the foregoing are true copies of the following papers on file in the clerk's office of said court in the cause in bankruptcy,

No. 14061.

J. W. CALNAN COMPANY, Bankrupt.

Creditors' Petition,
Answer of J. W. Calnan Company,
Motion to Amend Answer and Order Thereon,
Petition to Intervene by Mechanics Trust Company,
Withdrawal of Intervening Petition of Mechanics Trust Company,
Intervening Petition of Massachusetts Breweries Company,
Report of Referee on Question of Adjudication,
Adjudication of Bankruptcy,
Opinion of the Court,
Testimony and Exhibits,
Petition for Appeal,
Assignment of Errors,

and also of the Bond to Party on Appeal and the original Citation issued upon the appeal of J. W. Calnan Company, the bankrupt in said matter, with the acceptance of service thereof.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at Boston, in said district, this nineteenth day of June, A. D. 1909.

[SEAL.]

FRANK H. MASON, *Clerk*.

127 United States Circuit Court of Appeals for the First Circuit,
October Term, 1909.

No. 831.

J. W. CALNAN COMPANY, Bankrupt, Appellant,

v.

HENRY A. DOHERTY et al., Creditors, Appellees.

Appeal from the District Court of the United States for the District
of Massachusetts.

Before Colt, Putnam and Lowell, JJ.

Opinion of the Circuit Court of Appeals, November 3, 1909.

PUTNAM, J.: In this case the J. W. Calnan Company, corporation, was adjudicated a bankrupt by the District Court on an involuntary petition, and thereupon the corporation appealed to us. The adjudication was based upon a payment made to M. H. Curley & Company. The proposition urged on the District Court and also on us by the appellant is as follows:—

"Shortly, the appellant contends that M. H. Curley & Co. were never a creditor of it; that it never owed M. H. Curley & Co. anything, hence there could be no preference and no act of bankruptcy; and it is confidently asserted that upon this ground alone the appellant is entitled to a reversal of the judgment of the court, adjudicating it a bankrupt."

By "it" is intended the appellant. The payment referred to was actually made by the corporation by its check on the First National Bank of Boston to the order of the creditors. Nevertheless, it is said that the real debtor was Mr. Wise. The business to
128 which the account paid related was a retail liquor business at the store No. 321 Tremont Street, in Boston; and the merchandise which the account represented was delivered at that store, which the bookkeeper for Curley testified was the store of J. W. Calnan Company, as he understood it. The case, however, is determined by applying the principle that one who credits an agent who, by the consent or with the knowledge of his principal, is transacting the principal's business in his own name, that is, the name of the agent, may ordinarily pursue for payment the agent or the equitable owner who lies behind the agent.

J. W. Calnan Company, the corporation, was organized under the laws of Massachusetts in January, 1902. The certificate of organization shows that at that time it had merchandise to the amount of

\$2000, fixtures to the amount of \$1500, and cash, making up in the whole \$10,000. While there is no direct proof that this merchandise was the merchandise then at the store 321 Tremont Street, there is enough to satisfy the court, which may draw inferences as a jury may draw them, as also the District Court might do, that this merchandise was the same stock of goods remaining, or continuing by renewal, which existed at the store No. 321 Tremont Street at the dates when the transactions to which this proceeding in bankruptcy relates took place. It also appears that, at those dates, the daily cash receipts at that store, and the ordinary disbursements made there, were deposited in the name of J. W. Calnan Company in the First National Bank, and paid out on its checks. The record also fails to disclose that there was ever any transfer by J. W. Calnan Company of the stock of merchandise or business which we have described.

It is true that behind the J. W. Calnan Company there were various persons who seemed to be active in carrying on the business, and who made transfers one to the other. Among these were a J. W. Calnan & Company, a copartnership, Wise, one Sullivan, and perhaps others. Nevertheless, as we have said, no transfer from the J. W. Calnan Company, the corporation, is shown by the record. Therefore, we may infer, as we have also said, that the business was transacted, either purposely or by acquiescence, in the name of J. W. Calnan Company; so that, whoever may have been from time to time the equitable owners of the property involved, and whatever transfers there may have been between them, the rule of law which we have stated applies; and M. H. Curley & Company, and other creditors, had the option to prosecute claims against the corporation involved here, or against the equitable owners of the stock of merchandise and business. Therefore, so far as this proposition is concerned, the adjudication was properly made.

At the last moment the proposition was made to us by the appellant that there was in fact no preference, even if the debtor was the J. W. Calnan Company. This, however, has not been submitted to us, either orally or on brief, in such a way as, if we gave consideration to it, would relieve us from making an original investigation for ourselves of the considerable proofs which the record contains. If the appellant intended to raise this point earnestly, it was its duty to have brought out the facts by brief as required by our Rules. As this was not done, we decline to give this view of the case consideration.

A brief has been passed us on the question of costs; but, as the case results, whatever question there is, if any, can be settled on appeal from the taxation of the taxing master.

The judgment of the District Court is affirmed, and the appellees recover their costs of appeal.

131 & 132 United States Circuit Court of Appeals for the First Circuit, October Term, 1909.

No. 831.

J. W. CALNAN COMPANY, Bankrupt, Appellant,

v.

HENRY A. DOHERTY et al., Creditors, Appellees.

Final Decree in Circuit Court of Appeals.

NOVEMBER 3, 1909.

This case came on to be heard October 14, 1909, upon the transcript of the record of the District Court of the United States for the District of Massachusetts, and was argued by counsel.

On consideration whereof, it is now, to wit, November 3, 1909, here ordered, adjudged and decreed, as follows: The judgment of the District Court is affirmed, and the appellees recover their costs of appeal.

By the Court:

FRANCIS M. FOGARTY, *Clerk.*

133 & 134

Petition for Rehearing.

United States Circuit Court of Appeals for the First Circuit.

No. 831.

J. W. CALNAN COMPANY, Appellant,

v.

HENRY A. DOHERTY et al., Appellees.

Petition for Rehearing.

(Filed December 2, 1909.)

Now comes the appellant and, being aggrieved by the decision as rendered, prays for a rehearing in order that full justice may be done, and the appellant files herewith its brief setting out its reasons and the errors and omissions complained of.

By Its Counsel, CLARENCE F. ELDREDGE.

Certificate.

I, Clarence F. Eldredge, counsel for the appellant, certify that in my opinion there is good ground for this petition, that it is not filed for the purpose of delay, and that in my opinion it should be granted.

CLARENCE F. ELDREDGE,
Counsel for the Appellant.

135 & 136

Order Denying Rehearing.

United States Circuit Court of Appeals for the First Circuit,
October Term, 1909.

No. 831.

J. W. CALNAN COMPANY, Bankrupt, Appellant,
v.
HENRY A. DOHERTY et al., Creditors, Appellees.

Order of Court Denying Rehearing.

JANUARY 12, 1910.

The court having fully considered the petition for rehearing filed by the bankrupt, appellant, on December 2, 1909, and no judge who concurred in the judgment entered on November 3, 1909, desiring that the case be reargued;

It is ordered that the petition for rehearing filed on December 2, 1909, be and the same is hereby denied, and mandate may issue after ten days.

By the Court:

FRANCIS M. FOGARTY, *Clerk.*

137 & 138

Order Staying Mandate.

United States Circuit Court of Appeals for the First Circuit.
October Term, 1909.

No. 831.

J. W. CALNAN COMPANY, Alleged Bankrupt, Appellant,
v.
HENRY A. DOHERTY et al., Creditors, Appellees.

Order of Court Staying Mandate.

JANUARY 21, 1910.

Upon motion of counsel for the appellant it is ordered that mandate be and the same hereby is stayed until further order of court.

By the Court:

FRANCIS M. FOGARTY, *Clerk.*

139 & 140

Petition for Appeal.

United States Circuit Court of Appeals for the First Circuit.

J. W. CALNAN COMPANY, Alleged Bankrupt, Appellant,
v.

HENRY A. DOHERTY et al., Appellees.

Petition for Appeal.

(Filed in Circuit Court of Appeals and Allowed January 25, 1910.)

The appellant J. W. Calnan Company respectfully shows that the above-entitled cause was heard and a final decree ordered on the third day of November, 1909; that thereafter and within the thirty days allowed for appeal, to wit: December 2d, 1909, it filed its petition for a rehearing and that said petition for a rehearing was denied on the twelfth day of January, 1910; that by the terms of said final decree the decree of the District Court allowing the claims of the appellees to the amount of Twenty seven hundred and Sixteen 32/100 Dollars against the appellant was affirmed, and that said decision involved a question which might have been taken to the Supreme Court of the United States on appeal or writ of error from the highest court of a state, to wit,—a title, right, privilege or immunity claimed by the appellant under the Bankruptcy Act, and the decision of the District Court affirmed by this Court, denied said title, right, privilege or immunity.

And your petitioner complains that manifest error hath appeared in the record and proceedings in this case to the great damage of your petitioner.

Wherefore, your petitioner prays that an appeal be allowed in due form of law to the Supreme Court of the United States, to the end that said error shall be duly corrected and full and speedy justice done to the parties aforesaid in this behalf.

And your petitioner files herewith an assignment of errors which set out separately and particularly each error asserted and intended to be urged.

And your petitioner further offers a supersedeas bond, in such sum and with such good and sufficient sureties as may be approved by a Judge of this Court that the appellant will prosecute his appeal to effect and answer all damages and costs if he shall fail to make his plea good.

141 & 142 By His Attorney, CLARENCE F. ELDRIDGE.

JANUARY 25, 1910.

Allowed by the court in open court.

W. L. PUTNAM,
U. S. Circuit Judge, Presiding.

143 & 144

Assignment of Errors.

UNITED STATES OF AMERICA:

Supreme Court of the United States.

J. W. CALNAN COMPANY, Alleged Bankrupt, Appellant,
v.
HENRY A. DOHERTY et al., Creditors, Appellees.

Assignment of Errors.

(Filed in Circuit Court of Appeals January 25, 1910.)

And now comes the appellant and says that in the record and proceedings in the above-entitled cause there is manifest error, in this, to wit:

1. That the Court erred in finding that the matters alleged in the involuntary petition in this cause, were sufficient to give jurisdiction to the District Court sitting in Bankruptcy.
2. That the Court erred in finding that the District Judge had the power under the Bankruptcy Act to refer an involuntary petition under Rule XII of Orders in Bankruptcy to a referee to hear the evidence and find the facts and to treat such finding of facts as a prima facie case against the alleged bankrupt.
3. That the Court erred in finding that the Bankruptcy Court had jurisdiction in the absence of J. W. Calnan & Co., as parties, to determine that the appellant owned said firm of J. W. Calnan & Co., and that a payment by J. W. Calnan & Co., of its own debt, constituted a preference by the appellant.
4. That the Court erred in finding that the District Court had jurisdiction in the absence of Wise and J. W. Calnan & Co., as parties, to determine that Wise owned both the appellant and J. W. Calnan & Co., and that their creditors without liquidating their claims in a court possessing jurisdiction over all the parties could maintain an involuntary petition against the appellant.
5. That the Court erred in affirming the decree adjudicating the appellant a bankrupt.
6. That the Court erred in finding that the appellant had committed an act of bankruptcy.
7. That the foregoing errors assigned numbered 1 to 6 deprived the appellant of due process of law and operates as an unreasonable seizure of its papers and effects and deprives it of title, rights, privileges and immunities under the Bankrupt Act.
8. That the Court erred in finding that the payment to M. H. Curley & Co., was made by the appellant out of its funds.
9. That the Court erred in rejecting the testimony of the petitioning creditors' witness that the appellant's check to M. H. Curley was given to J. W. Calnan & Co., in exchange for cash.

10. That the Court erred in finding that the liquors in question were sold to the appellant and rejecting the testimony of the petitioning creditors' book-keeper that said liquors were sold to and billed to J. W. Calnan & Co.

11. That the Court erred in drawing the inference that the retail liquor stock owned by the appellant in January 1902 remained in existence and was the same stock in J. W. Calnan & Co.'s hands when the petition herein was filed Aug. 29, 1908 and rejecting the inference of the statute of limitations that full payment had been made for that stock.

12. That the Court erred in finding that the receipts of J. W. Calnan & Co., were banked in the appellant's name, and rejecting the testimony of the petitioning creditors' witness Sullivan, that J. W. Calnan & Co., kept no bank account and took the appellant's checks for the amounts so deposited and used them to pay their bills.

13. That the Court erred in holding that an equitable creditor prior to the liquidation of his claim and its establishment as a legal debt, can become a petitioning creditor in bankruptcy.

14. That the Court erred in affirming the decision of the District Court that the payment to Curley & Co., was a preference and that there was no evidence to control the presumption of an intent to prefer.

15. That the Court erred in affirming that decision of the District Court that the giving of a preference raises a presumption that it was given with the intent to prefer.

16. That the Court erred in finding upon the facts offered in proof by the petitioners' witnesses that any preference has been given to Curley & Co., either by the appellant or by J. W. Calnan & Co.

17. That the Court erred in holding that Henry A. Doherty is a creditor of the appellant.

18. That the Court erred in holding that the Mechanics Trust Company is a creditor of the appellant.

19. That the Court erred in holding that Massachusetts Breweries Company is a creditor of the appellant.

Wherefore the J. W. Calnan Company prays that the judgment of the Circuit Court of Appeals for the First Circuit be reversed, and the said Supreme Court of the United States may cause further to be done to correct said error what of right and according to the laws and customs of the United States should be done.

By Its Attorney, CLARENCE F. ELDREDGE.

147 & 148

Order as to Appeal Bond.

United States Circuit Court of Appeals for the First Circuit, October Term, 1909.

No. 831.

J. W. CALNAN COMPANY, Bankrupt, Appellant,

v.

HENRY A. DOHERTY et al., Creditors, Appellees.

Order of Court as to Appeal Bond, January 25, 1910.

PUTNAM and ALDRICH, JJ.:

Upon the filing of the appellant's petition for appeal to the Supreme Court of the United States, It is ordered that citation, signed by the Senior Circuit Judge, issue when a supersedeas bond in the sum of \$2500, with sureties approved by the clerk, has been filed by the appellant.

By the Court:

FRANCIS M. FOGARTY, *Clerk.*

149 & 150

Bond on Appeal.

United States Circuit Court of Appeals for the First Circuit.

J. W. CALNAN COMPANY, Alleged Bankrupt, Appellant,

v.

HENRY A. DOHERTY et al., Appellees.

Bond on Appeal.

(Filed and Approved February 2, 1910.)

Know all men by these presents, that we, J. W. Calnan Company, of Boston, in the county of Suffolk and State of Massachusetts, as principal, and John E. Burns of said Boston and Joseph R. De Ferrari of said Boston as sureties, are held and firmly bound unto the United States of America, in the full and just sum of Twenty-five Hundred Dollars to be paid to the United States of America, for which payment well and truly to be made, we bind ourselves our successors, heirs, executors, and administrators, jointly and severally firmly by these presents. Signed and sealed with our seals, and dated this second day of February, in the year of our Lord one thousand nine hundred and ten.

The conditions of this obligation are such that whereas at a session of the Circuit Court of Appeals for the United States for the First Circuit, for the District of Massachusetts, in an involuntary petition

in bankruptcy pending in said Court, between Henry A. Doherty, Mechanics Trust Company and Massachusetts Breweries Company petitioners, and said J. W. Calnan Company alleged bankrupt, a final order or decree was issued therein rendered on the twelfth day of January A. D. 1910, affirming the decree of the District Court of the United States for the District of Massachusetts, entered therein on the thirteenth day of May A. D. 1909, and the said J. W. Calnan Company, Appellant, having obtained an order from said United States Circuit Court of Appeals for the First Circuit allowing an appeal to the Supreme Court of the United States to reverse the afore-said decree, and a citation directed to the appellees is about to be issued citing and admonishing them to be and appear at the Supreme Court of the United States.

Now if the said appellant shall prosecute its said appeal to effect and shall answer all damages and costs that may be awarded against it, if it shall fail to make its plea good, then the above obligation to be null and void, otherwise to remain in full force and virtue.

151 & 152

J. W. CALNAN CO., [CORPORATE SEAL.]
By JOHN A. SULLIVAN, *Pr'st.*
JOHN E. BURNS. [SEAL.]
JOSEPH R. DE FERRARI. [SEAL.]

Signed, sealed and delivered in presence of
C. F. ELDREDGE,
To All.

February 2, 1910.

Approved:

FRANCIS M. FOGARTY, *Clerk.*

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Citation on Appeal.

UNITED STATES OF AMERICA, ss:

The President of the United States to Henry A. Doherty, Massachusetts Breweries Company, a corporation organized under the laws of the State of Virginia, and Mechanics Trust Company, a corporation organized under the laws of the Commonwealth of Massachusetts, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, on the* sixteenth day of February next, pursuant to an Appeal duly obtained from a decree of the† United States Circuit Court of Appeals for the First Circuit wherein J. W. Calnan Company, a corporation organized under the laws of the Commonwealth of Massachusetts, is appellant and you are appellees, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Le Baron B. Colt, Senior Circuit Judge, and a Judge of the United States Circuit Court of Appeals for the

First Circuit this second day of February, in the year of our Lord one thousand nine hundred and ten.

LE BARON B. COLT,
Senior Circuit Judge.

* Not exceeding 30 days from the day of signing.

† Name of Court in which the Decree is entered.

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BOSTON, MASS., Feb. 2d, 1910.

Service of the within citation is hereby accepted.

MECHANICS TRUST CO.,
By H. M. BRITTON, *Att'y.*
MASSACHUSETTS BREWERIES
COMPANY,
By CLARK & ORDWAY, *Its Attorneys.*

HENRY A. DOHERTY,
By His Att'y, JOHN H. BLANCHARD.

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Certificate of Clerk of Circuit Court of Appeals.

United States Circuit Court of Appeals for the First Circuit, October Term, 1909.

No. 831.

J. W. CALNAN COMPANY, Bankrupt, Appellant,
v.
HENRY A. DOHERTY et al., Creditors, Appellees.

Clerk's Certificate.

I, Francis M. Fogarty, Clerk of the United States Circuit Court of Appeals for the First Circuit certify that the foregoing is a true copy of the record and all proceedings of said Circuit Court of Appeals in the cause entitled,

No. 831.

J. W. CALNAN COMPANY, Bankrupt, Appellant,
v.
HENRY A. DOHERTY et al., Creditors, Appellees,

in said Circuit Court of Appeals determined, the Petition for Appeal, the Assignment of Errors, the Bond on Appeal and also the original Citation issued upon the appeal of J. W. Calnan Company, Bankrupt, Appellant, in said cause with acknowledgments of service thereon.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit,

at Boston, in said First Circuit the fourth day of February, A. D. 1910.

[Seal United States Circuit Court of Appeals, First Circuit.]

FRANCIS M. FOGARTY, *Clerk*.

Endorsed on cover: File No. 22,027. U. S. Circuit Court of Appeals, 1st Circuit. Term No. 212. J. W. Calnan Company, appellant, vs. Henry A. Doherty, Massachusetts Breweries Company, and Mechanics Trust Company. Filed February 17th, 1910. File No. 22,027.



Supreme Court of the United States.

October Term, 1911.

No. 212.

J. W. CALNAN COMPANY, ALLEGED BANKRUPT,
APPELLANT,

V.

HENRY A. DOHERTY ET AL., CREDITORS,
APPELLEES.

Brief of Appellant.

I.

STATEMENT OF CASE.

This is an appeal from the Circuit Court of Appeals for the First Circuit, which entered a decree affirming a decree of the District Court for Massachusetts, adjudicating the appellant a bankrupt. The original involuntary petition alleged the appellant had less than twelve creditors, and alleged two acts of bankruptcy, viz., a preference and concealment of assets.

The District Court entered an order adjudicating the appellant a bankrupt upon an alleged single preference, viz., a payment of a debt due to M. H. Curley & Company.

The appellant is a corporation formed under the laws of Massachusetts about 1902. It has never been dissolved nor ceased to exist as a corporation. Its business

was the manufacture, promotion, and sale of Herman's Bitters and Pagoda cigars (Record, p. 33). For a great many years prior to 1902, and since that time, there has been a liquor business conducted under the name of J. W. Calnan & Company. Until 1907 John P. Wise was the licensee of that place. Several other names appeared on the licenses at different times, to conform to a custom for protection in case of death of the licensee. When the corporation was formed Wise was chosen treasurer, but the corporation never owned the liquor business. The Excise Commission does not permit a corporation to own and conduct a licensed saloon (Record, pp. 69, 70).

In 1907 Mr. Wise sold his liquor business, which he had theretofore carried on under the name and style of J. W. Calnan & Company, to John A. Sullivan, who, for many years, had been head barkeeper, and in later years manager.

On the day Mr. Sullivan became the owner of the saloon the Massachusetts Breweries Company ceased to furnish stock for the store (Record, pp. 73, 74).

The situation is better understood if it is borne in mind, what the Court will take judicial knowledge of, that here was an important distributive point passing from the control of one series of brewery interest to that of a rival.

To obtain the money to buy this saloon Mr. Sullivan went to the Rueters, who conducted another brewery, and who gave him \$9000 in cash to purchase the place, taking a first mortgage for that amount in return (see Evidence of Sullivan and Exhibit 10, p. 99).

Wise took a second mortgage for the balance of the purchase price (Exhibit 11, p. 101). Mr. Wise, who

was the owner of the property at the time of the sale, joined in the mortgage to the Rueters, "In token of his assent to the conditions of said mortgage." It will be noticed that Wise, at that time, was the licensee. A new license was taken out in Sullivan's name and that of Wise. Later in the same year, Wise retired from the license (Record, p. 47), and thereafter the license ran to Sullivan alone, with a friend (another Mr. Sullivan) upon it for protection.

This sale was made about June, 1907. The claim of the appellee, Doherty, did not come into existence until long after the sale. The petition in this case was filed August 29, 1908. The statement of the referee that it was "a significant fact that Wise assented to the mortgage to Rueter & Company as an act which would be entirely unnecessary if he sold the business outright to Mr. Sullivan," is uncalled for, and has no bearing. On the contrary, it was the most natural thing in the world, where the question of the license was involved, as in the Rueter mortgage, and Mr. Wise was upon the license for the time being, that he should assent to the giving of the mortgage.

It is found that Rueter & Company actually advanced \$9000. Sullivan continued under the same trade name of J. W. Calnan & Company.

In May, 1908, nearly a year after Sullivan bought the business from Wise, goods were bought from M. H. Curley & Company. The counsel for Doherty & Company undertook to show that the goods had been charged and credit given to the appellant, but it appeared, conclusively, from the evidence of Drown, the bookkeeper for Curley (pp. 25-30), that the goods were sold to *J. W. Calnan & Company*, which then consisted of Mr.

Sullivan, and there never was any charge or credit given to the appellant.

Sullivan purchased from Wise a check signed by the appellant, with which he paid the bill in question.

In May, 1908, M. Doherty & Company ceased to sell liquor to the licensed saloon known as J. W. Calnan & Company (pp. 37, 38). It had been at Mr. Wise's request that Sullivan continued to do business with them after the transfer, and Sullivan had always supposed that Wise was a member of M. Doherty & Company. There had been for twenty years a steady interchange of notes between Wise and Doherty, and their relations had been intimate. Sullivan supposed that Wise was a partner of Doherty; and when he referred to the "boss," no doubt he meant Wise, believing Wise was a member of the firm of M. Doherty & Company, and desired him to buy goods from them.

In passing, it is to be noticed that the referee refers to the evidence and bill of Murray (pp. 8, 104, and 62). This sale to Murray was six months *prior* to the purchase by Sullivan, and naturally Sullivan, being manager, receipted the bill for Wise, who owned the business. This established conclusively that at that time (January, 1907) Wise was the owner of the business, and was running it. Thereafterwards, in June, 1907, he sold it out to Sullivan.

Two minor incidents engendered much heat at the hearings before the referee, and apparently had much to do in influencing his finding and recommendation. They were the non-appearance of Mr. Wise upon the stand, and the purchase of the judgment of the Mechanics Trust Company, an intervening creditor.

The district judge has considered the situation in his

opinion, and the facts show that this judgment was against Wise personally, and he had a right to buy the judgment.

While the corporation never admitted it was insolvent, it did not produce its books and papers, if any, under Bankrupt Act, sec. 3 (*d*), nor did it attempt to prove that it was not insolvent under section 3 (*c*). It made its defense on the insufficiency of the petition, the lack of any lawfully qualified petitioning creditor, and that there was no preference.

Appellant's Contentions.

The contentions of the appellant are that the presumption is that it is not bankrupt, and has not committed an act of bankruptcy, and that, because of insufficiency of the petition filed, the parties alleging themselves to be creditors did not require it to put in its books and expose its business to the Court; that it was entitled to rest upon the errors and insufficient pleading. Further, that on the proofs the petitioning parties are not creditors within the meaning of the Bankruptcy Act, and that the single payment found to be a preference was not a preference, and was not even a payment by it.

II.

JURISDICTION OF THIS COURT.

The jurisdiction of this Court is supported by section 25 (*b*) and 1, the District Court having found the appellant indebted to Henry A. Doherty in the sum of \$713.86, to Mechanics Trust Company in the sum of \$1038.71, and to Massachusetts Breweries Company in the sum of \$963.75, the total finding against the appel-

lant being in excess of \$2000, to wit, \$2718.32, and the assets of which the appellant would be deprived being \$5000 (Record, p. 88).

The jurisdiction of this Court is also supported by section 6 of the Act of March 31, 1891, creating the Circuit Courts of Appeals, it being apparent that the matter in controversy exceeds \$1000.

III.

BRIEF OF ARGUMENT.

(1) The District Court had no jurisdiction of the petition on the pleadings.

(Assignment of Errors, 1, 2, 3, and 4.)

(2) The petitioners are not creditors of your appellant.

(Assignment of Errors, 13, 17, 18, and 19.)

(3) Errors in construing undisputed testimony.

(Assignment of Errors, 8, 9, 10, 11, 12, and 16.)

(4) Due process of law.

(Assignment of Errors, 7.)

(5) The findings of fact are absolutely wrong and will work a grave injustice.

(Assignment of Errors, 5 and 6.)

(a) That the sale to Sullivan was not *bona fide*.

(b) That the corporation owned the saloon legally or equitably.

(6) Even under the facts as found there is no preference.

(Assignment of Errors, 14 and 15.)

(a) The payment was of a monthly bill on a current account.

(b) The sum was not substantial enough to raise any presumption of preference.

(c) There is absolutely no evidence or reasonable inference that Curley even dreamed he was being preferred, or considered the saloon insolvent.

(d) The net result of the transaction was that the assets of the saloon were increased.

IV.

ARGUMENT.

(1) **The District Court had no jurisdiction of the petition on the pleadings.**

There are nineteen assignments of error: eight of them are jurisdictional, and will be considered first.

1. That the Court erred in finding that the matters alleged in the involuntary petition in this cause were sufficient to give jurisdiction to the District Court sitting in bankruptcy.

The Bankruptcy Courts are Courts of limited jurisdiction, and everything necessary to confer jurisdiction must be set out affirmatively and with certainty; failing in these particulars, there is nothing before the Court to invoke its powers, and its acts are null and void. Want of jurisdiction over the subject matter may be raised at any time. It was raised and argued in the Circuit Court of Appeals (First Assignment, Record, p. 109), and was fully presented in the brief accompanying the petition for a rehearing.

The sole petitioning creditor, the appellee, alleged that he had notes of the appellant to the amount of \$713.86, and that the security he held was exactly \$500 short

of the amount of said notes (Record, p. 2); further, that the appellant, on or about April 30, 1908, and at divers other dates in May, June, and July, 1908, gave preferences to creditors, the names of the creditors and the amounts of the preferences being unknown to the petitioning creditor. Also, that upon the same dates the appellant removed and concealed property and money, the amount being unknown to the petitioning creditor (Record, p. 2).

It is respectfully submitted that the petition was so uncertain and imperfect that no jurisdiction was conferred upon the Bankruptcy Court, except to amend or dismiss it, and as the appellee went to hearing upon it the only judgment which could be lawfully entered was to dismiss it.

2. That the Court erred in finding that the district judge had the power under the Bankruptcy Act to refer an involuntary petition under rule XII of Orders in Bankruptcy to a referee, to hear the evidence and find the facts, and to treat such finding of facts as a *prima facie* case against the alleged bankrupt (Record, pp. 7-12).

The Act, and the decisions under the Act, distinguish between the acts which the Judge must perform and those which may be delegated to a referee. The Act (sec. 18 *d*) requires that the judge determine the issue of bankruptcy in involuntary cases when a jury is not demanded. Doubtless the judge may refer a contested case to a referee to take testimony, but not to make findings of fact which shall constitute a *prima facie* case and transfer the burden of proof to the alleged bankrupt, in case a finding of fact is made against him. In

very many, perhaps in most, other cases, references may be made to a special master to report the evidence and find the facts, but this is forbidden by the terms of the act when the issue is an adjudication of bankruptcy, and the reason for it is founded in knowledge of the workings of human nature. Under the operation of the practice complained of in this assignment the case is sent to the same referee on the question of bankruptcy who would have the settlement of the estate and the fees in case the adjudication is made. The referee is human and has a money interest in the controversy which is sent to him to determine. It was this condition which Congress aimed to obviate when it required the adjudication to be made by a salaried judge. It is respectfully submitted that this assignment should be sustained.

3. That the Court erred in finding that the Bankruptcy Court had jurisdiction in the absence of J. W. Calnan & Company, as parties, to determine that the appellant owned said firm of J. W. Calnan & Company, and that a payment by J. W. Calnan & Company of its own debt constituted a preference by the appellant (Record, pp. 7-12, 113).

4. That the Court erred in finding that the District Court had jurisdiction in the absence of Wise and J. W. Calnan & Company, as parties, to determine that Wise owned both the appellant and J. W. Calnan & Company, and that their creditors, without liquidating their claims in a Court possessing jurisdiction over all the parties, could maintain an involuntary petition against the appellant (Record, pp. 7-12, 113).

It is respectfully submitted that the doctrine of *res ipsa loquitur* is a full and conclusive argument in support of the above assignments. The record shows that neither J. W. Calnan & Company nor Wise were parties to the bankruptcy proceedings, and in so far as their rights were concerned the Bankruptcy Court was without jurisdiction over them (Act, sec. 23, as amended and secs. 60 *b* and 67 *e*) (Record, pp. 7-12).

(2) The petitioners are not creditors of your appellant.

13. That the Court erred in holding that any equitable creditor, prior to the liquidation of his claim and its establishment as a legal debt, can become a petitioning creditor in bankruptcy.

17. That the Court erred in holding that Henry A. Doherty is a creditor of the appellant (Record, pp. 2, 14-23, 67-71, 78-81).

18. That the Court erred in holding that the Mechanics Trust Company is a creditor of the appellant (Record, pp. 81, 87).

19. That the Court erred in holding that Massachusetts Breweries Company is a creditor of the appellant (Record, pp. 71-78).

A petitioning creditor must hold a provable claim, and an intervening creditor, in order to be counted as a petitioning creditor, must also hold a provable claim. The appellee, the petitioning creditor, admitted in his sworn petition (Record, pp. 1, 2,) that he held security; the record shows that he never applied to the Bankruptcy Court to fix its value, nor did the Court, of its own motion, make any finding as to the value of his security, therefore, the appellee did not have any claim

entitling him to take part in any proceeding as a creditor (Act. sec. 57, *c* and *h*).

Grant v. Laird, 212 U.S. 445.

The bookkeepers of Massachusetts Breweries Company testified that the debt sought to be proved against the appellant was charged and billed to J. W. Calnan & Company, a firm (Record, pp. 73-78). This situation is attempted to be disposed of by the referee and judge on the ground that J. P. Wise owned both concerns. The Circuit Court of Appeals attempted to dispose of it by inferring the relation of principal and agent. The answer to the last proposition is that if such relationship existed it was Wise who was the principal, not the appellant. As to the former contention, the rules of the Bankruptcy Court are the equity rules of this Court and under those rules J. W. Calnan & Company and Wise would be necessary parties, but, as previously urged, the Bankruptcy Court had no jurisdiction over J. W. Calnan & Company or Wise; hence the controversy was one which must be settled in a Court having jurisdiction of all the parties, and until a favorable determination in such a Court, Massachusetts Breweries Company did not have a provable claim against the appellant.

The facts in *Grant v. Laird*, 212 U.S. 445, were so different that that case supports appellant; the issue in that case was certain as to the debtor, but uncertain as to amount; in this case the issue is as to which of several parties is the debtor, and that issue requires the presence of all the parties before the Court.

The case of Mechanics Trust Company rests upon another ground: the principal debtor was J. P. Wise;

the appellant was only secondarily liable as an endorser, although suable as a principal. Wise had both a duty and a right to pay what he owed so as to relieve him from attachment of his body on execution, provided the appellant's money was not used. This was done, and the discharge of the debt by the principal debtor discharged the surety, and thereafter that liability could not be counted as a creditor by any Court. On the facts it is entirely outside of any limitation either of the Act, or of authoritative decisions under it (Record, p. 87).

It has already been shown that the appellee's petition did not contain the averments as to the *res* sufficient to give jurisdiction, and, on the foregoing, it is submitted that the record shows that no creditor having a provable debt either signed the petition or intervened in the proceedings.

(3) Errors in construing undisputed testimony.

8. That the Court erred in finding that the payment to M. H. Curley & Company was made by the appellant out of its funds (Record, pp. 40, 41, 50, 51).

9. That the Court erred in rejecting the testimony of the petitioning creditor's witness that the appellant's check to M. H. Curley was given to J. W. Calnan & Company in exchange for cash (Record, pp. 30-59).

10. That the Court erred in finding that the liquors in question were sold to the appellant, and rejecting the testimony of the petitioning creditor's bookkeeper that said liquors were sold to and billed

to J. W. Calnan & Company (Record, pp. 25-30, 59-62, 69, 70, 45, 25-30, 44, 71-78).

11. That the Court erred in drawing the inference that the retail liquor stock owned by the appellant in January, 1902, remained in existence, and was the same stock in J. W. Calnan & Company's hands when the petition herein was filed, August 29, 1908, and rejecting the inference of the statute of limitations that full payment had been made for that stock (Record, p. 114).

12. That the Court erred in finding that the receipts of J. W. Calnan & Company were banked in the appellant's name, and rejecting the testimony of the petitioning creditor's witness Sullivan, that J. W. Calnan & Company kept no bank account, and took the appellant's checks for the amounts so deposited, and used them to pay their bills (Record, pp. 30-59, 50, 51).

16. That the Court erred in finding, upon the facts offered in proof by the petitioners' witnesses, that any preference has been given to Curley & Company, either by the appellant or by J. W. Calnan & Company (Record, pp. 30-59).

(4) Due Process of Law.

7. That the foregoing errors assigned numbers 1 to 6 deprived the appellant of due process of law and operate as an unreasonable seizure (145, 146) of its papers and effects and deprive it of title, rights, privileges, and immunities under the Bankrupt Act.

It is a right of a resident of this country, when sum-

moned before a Bankruptcy Court, to have specific acts of bankruptcy all- and so that he may know the charge on which the Court may take from him all his property and property rights, and perhaps refuse him a discharge. He is entitled to this, not only in order to prepare his defense, but also to protect him from ruin by suspicious or malicious or competing creditors, for when an involuntary petition is filed, the alleged bankrupt, if denying his bankruptcy, must produce his books and papers for a fishing expedition of any creditor, no matter how insignificant, and no matter how much injury to trade secrets may result. Privacy is a constitutionally protected property right, and it was never the intention of Congress, and we ask if it was the intention of this Court, in framing the rules and forms in bankruptcy, to permit examinations of alleged involuntary bankrupts on such insufficient allegations as those made by the appellee in this case.

It is respectfully submitted that due process of law requires sufficient pleadings, a Court of competent jurisdiction, and judgments or decrees within that jurisdiction. Acts and judgments in excess of jurisdiction do not constitute due process of law. For these reasons it is urged that the action of the Bankruptcy Court upon the insufficient petition, the reference by the judge to a referee to make findings of fact and orders entered thereon, and the arrogating of power to determine the rights in and relations of the appellant to business dealings of third parties not within the jurisdiction of the Court, acts not arising *ex contractu* or *ex delicto*, do not constitute due process of law, and, if not reversed, will result in an unwarranted seizure of the appellant's papers and property.

(5) The findings of fact are absolutely wrong and will work a grave injustice.

5. That the Court erred in affirming the decree adjudicating the appellant a bankrupt.

6. That the Court erred in finding that the appellant had committed an act of bankruptcy.

It is respectfully submitted that as the referee was not authorized under the law to make findings of fact, that his report is not to be considered in determining the errors assigned as to findings of fact, and that only the testimony can be referred to for that purpose; and as the district judge did not hear the evidence or see the witnesses, there are no presumptions in favor of his finding to prevent this Court giving full value to the evidence reported in the record.

(a) THAT THE SALE TO SULLIVAN WAS NOT BONA FIDE.

If the Supreme Court of the United States directly or indirectly sanctions this finding, no other Court in the land can be found who would find differently on any evidence, and Mr. Sullivan's saloon will be taken from him. He bought that saloon more than a year before this case was started.

He borrowed \$9000 in cash to do it. The fact he went to the Rueters to get the money, rivals of the brewing interests selling the store, sticks out like a block signal that the sale was *bona fide*. The Massachusetts Breweries stopped selling Sullivan the instant he became owner. He had joined the other camp. This is a fight over an important distributing point by rival liquor interests. Wise was getting out of the liquor business into real estate. Sullivan was a straight,

square man, who had risen to be manager of the place, and it was his ambition to be proprietor. The Rueter Brewing Company is not charged with recording a fake mortgage. The mortgage was recorded the next day after Sullivan got his money. Sullivan bought a license worth ten or twelve thousand dollars and the good-will of an old-established stand.

It is not surprising that Mr. Wise, with \$9000 at stake, would assist Mr. Sullivan in every way he could; nor is it surprising that a man starting with an \$18,000 debt would not have a bank account for a while. The sincerity and honesty of Mr. Sullivan shows all through his printed testimony. One does not need to see or hear him. It means a great deal to him personally — whether he is a proprietor or a dummy. The referee was led astray in the heat of conflict. His feelings, not his reason, determined his findings. We ask, with all the earnestness at our command, that you will keep Mr. Sullivan very much in mind in determining the case, and find directly that the sale to him was *bona fide*.

(b) THAT THE CORPORATION EVER OWNED THE SALOON.

The corporation was formed to take over the saloon. The Excise Commission of Boston blocked the project. If the corporation had owned the saloon in 1908, it would have made a return to the State House of "fixtures." Fixtures are a rather valuable part of a saloon. As it is, the return is of cash and debts receivable and good-will. Nothing else than the latter could represent the value of advertising Herman's Bitters and Pagoda cigars. The corporation was forbidden to engage in the retail liquor business, so it had to either go into

innocuous desuetude or start something else. It started these bitters and the cigar, and this is the only business the corporation ever had. Why, this question as to whether the corporation should be allowed to own the saloon was so well considered that the Excise Commission had a public hearing about it!

Counsel who has tried the case for the petitioner throughout in open Court, expressly admitted that the firm was in existence subsequent to the corporation (Record, p. 26).

(6) Even under the facts as found there is no preference.

14. That the Court erred in affirming the decision of the District Court that the payment to Curley & Company was a preference and that there was no evidence to control the presumption of an intent to prefer.

15. That the Court erred in affirming that decision of the District Court that the giving of a preference raises a presumption that it was given with the intent to prefer.

The basis of the rule of law governing the set of facts here presented undoubtedly is whether or not the transaction complained of lessens the debtor's solvency, or, as Mr. Justice MOODY phrased it in *Weld v. Provident Trust Co.*, 214 U.S. 292 (1909), whether the "net effect was to enrich the bankrupt's estate by the total sales, less the total payments."

The Massachusetts rule was stated in *Clarke v. Second National Bank*, 177 Mass. 257, 265 (1900), by the then Chief Justice HOLMES, as follows: "We cannot but

think that the question of preference ought to be determined chiefly by its effect on the assets of the debtor rather than by its effect on the position of the creditor. The proposition as stated by the Supreme Court of the United States is that the debtor's dealing will stand if it leave his estate in as good plight and condition as previously." *Cook v. Tullis*, 18 Wall. 332, 340; *Stewart v. Platt*, 101 U.S. 731, 743. "The reason is that the exchange takes nothing away from the other creditors." *Sawyer v. Turpin*, 91 U.S. 114, 121. *Forbes v. Howe*, 107 Mass. 427, 430, 433.

In the case of *In re Maher*, 144 Fed. 503, the payments were in the amounts of from \$100 to \$250 each, at intervals of a month or thereabouts, on account, as the debtors were able to obtain money in order that they might continue to obtain goods, and the same referee as in the case at bar, James M. Olmstead, Esq., in his report says, at page 506: "The effect of these payments to Woodward & Co., and Newark Blue Stone Co., was in reality not to reduce the amount of assets available, for the creditors, but had the effect of increasing the credit and supplies extended to the debtors," and Judge DODGE, in adopting the referee's report, says, at page 508: "It is apparently not contended, and in any case the evidence does not show, that the creditor had reasonable cause to believe that it was intended to give a preference by the payments."

In the case of *In re Douglas Coal & Coke Co.*, 131 Fed. 769 (1904), the payments were \$53.40, September 18, 1903, *in full* for goods bought in August; \$100 on \$160 due on November 23, 1903, and \$200 on \$416 in

September, 1903, and a payment November 23, 1903, of \$250 on a debt of \$299.42. The referee's report is remarkable, and treats of the legal aspects of the situation at length and reviews and classifies the cases, and it was held by Judge CLARK that these payments did not constitute a preference.

The question has recently been brought to the attention of this Court in *Weld v. Provident Trust, ubi supra*.

Yale v. Dahl Millikan Grocery Co., 193 U.S. 526.

Jaquith v. Alden, 189 U.S. 78.

It is our contention that the facts in this case, even assuming them to be correctly found, come within the law as stated in the foregoing cases.

(a) THE PAYMENT WAS OF A MONTHLY BILL ON A CURRENT ACCOUNT. The payments were June 8, August 31, and November 16, 1908 (Record, pp. 26-30).

The goods were ordered May 8, July 2, and September 24, and December 24, 1908. Only the payment of June 8 was considered by the district judge.

The goods ordered were delivered to the retail liquor store, added to the stock, sold, and paid for the following month. It was all in the regular course of business.

(b) THE SUM WAS NOT SUBSTANTIAL ENOUGH TO RAISE ANY PRESUMPTION OF PREFERENCE. It was certainly not a transfer prior to a *voluntary* petition in bankruptcy. When M. Doherty & Company ceased to supply the saloon, M. H. Curley & Company took their place, and the very first bill of goods bought of them is now used against us as a preference. (It would hardly seem that

Curley & Company was a creditor in the ordinary sense.) His bills were paid within a month or so after the goods were ordered, and there was no accumulated debt wholly or partially wiped out by the transfer of a "large portion of his property," as Mr. Justice FIELD puts it in *Toof v. Martin*, 13 Wall. 40, 48 (1871).

(c) THERE IS ABSOLUTELY NO EVIDENCE OR REASONABLE INFERENCE THAT CURLEY EVEN DREAMED HE WAS BEING PREFERRED, OR CONSIDERED THE SALOON INSOLVENT. The evidence of Mr. Curley and Mr. Drown, his bookkeeper, cover a very few pages of the record (pp. 25-30, pp. 44, 59-65). It is the height of absurdity to believe that Mr. Curley could have believed himself preferred on the payment of a small bill for goods bought the month before, especially when the place had such a reputation as a distributing point.

Without any question, he was ready and willing to sell them and he kept right on selling them after this involuntary petition.

(d) THE NET RESULT OF THE TRANSACTION WAS THAT THE ASSETS OF THE SALOON WERE INCREASED.

Little need be said as to this. It is apparent.

It was unbelievable that so gross an error would not be seen and corrected in the two lower Courts, in the face of the fact Mr. Sullivan went to a *rival* brewer's and got his money and bought the place more than a year before this petition, which purchase was a matter of public record at the City Hall and in the License Commission office.

The Supreme Court of the United States is asked to correct this error.

CONCLUSION.

The corporation was a legal person or entity. All corporations are but the "lengthened shadow of one man." Though one man practically own all the stock of a corporation, it continues a corporation until it is dissolved by law.

Broderip v. Salomon, Law Reports (1897),
App. Cases, 22 (1896).

Parker v. Bethel Hotel Co., 96 Tenn. 252.

The attention of the Court is especially called to the words of Lord HALSBURY and Lord HERSHELL in *Broderip v. Salomon*: "I am at loss to understand what is meant by saying that A. Salomon and Company, Limited, is but an *alias* for A. Salomon. It is not another name for the same person; the company is *ex hypothesi* a distinct legal *persona*."

The appellant, the *J. W. Calnan Company*, has committed no act of bankruptcy, nor are the petitioners creditors of said corporation, and this petition should be dismissed.

Respectfully submitted,
CLARENCE F. ELDREDGE,
Attorney for the Appellant.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911

No. 212

J. W. CALNAN COMPANY, Appellant,

vs.

HENRY A. DOHERTY,
MASSACHUSETTS BREWERIES COMPANY, and
MECHANICS TRUST COMPANY, Appellees.

BRIEF OF HENRY A. DOHERTY, APPELLEE.

STATEMENT OF FACTS.

This was an involuntary petition in bankruptcy filed by and on behalf of Henry A. Doherty doing business under the name and style of M. Doherty & Co., an alleged creditor, against J. W. Calnan Company, a corporation duly established according to law and having a usual place of business in Boston.

The alleged acts of bankruptcy are, —

A preference and concealment of assets under paragraphs 1 and 2 Section 3 of the United States Bankruptcy Law.

Page 1. Transcript of Record.

The appellant by its answer admits the allegations as to its corporate existence, place of business and jurisdiction of the Court, but denies

1. It has committed any of the acts of bankruptcy set forth in the creditor's petition.
2. Denies its insolvency, and
3. Denies the creditor has a provable claim against it.

Page 3. Transcript of Record.

In an amended answer (Page 4, Record), it confirms and elaborates the third denial in its original answer.

BRIEF OF APPELLEE.

I.

It appears on the record, pages 117 and 118, the "petition for appeal" and "assignment of errors" were each filed and allowed January 25, 1910 and the final decree as appears by the record, page 115 was made and entered November 3, 1909.

"Appeals under the act to the Supreme Court of the United States from a circuit court of appeals, or from the supreme court of a Territory, or from the Supreme Court of the District of Columbia, or from any court of bankruptcy whatever, shall be taken within thirty days after the judgment or decree, and shall be allowed by a judge of the court appealed from or by a justice of the Supreme Court of the United States.

General Orders in Bankruptcy XXXVI — Paragraph II.

More than thirty days having elapsed between the filing of the final decree and the petition for appeal and assignment of errors, each should be dismissed.

The filing of a petition for rehearing (Record, page 115) and the order denying same (Record, page 116) does not excuse the filing of appeal or extend its time, no vacation or suspension of the decree having been made or asked for.

Conboy v. First National Bank, 16 Am. Bankruptcy Reports, P. 773.

Parker v. Snow, 143 Mass. R. 423.

Snow v. Dyer, 178 Mass. R. 393.

II.

The claim of appeal is based upon the following allegations:—

“That by the terms of said final decree the decree of the District Court allowing the claims of the appellees to the amount of twenty-seven hundred and sixteen 32/100 dollars against the appellant was affirmed, and that said decision involved a question which might have been taken to the Supreme Court of the United States on appeal or writ of error from the highest court of a state, to wit, a title, right, privilege or immunity claimed by the appellant under the Bankruptcy Act and the decision of the District Court affirmed by this Court, denied said title, right, privilege or immunity.”

Record, page 117.

It nowhere appears that there was any claim allowed amounting to two thousand dollars.

It does appear in the referee's finding the appellee had a valid claim as set forth in the petition (Record, page 9) and the judge of the District Court (Record, page 11) found “that the petitioning creditor Henry A. Doherty, holds the two notes overdue and unpaid, given by the alleged bankrupt, which are described in the petition, is

not disputed. I agree with the referee that in the evidence relating to the exchange of accommodation notes between Doherty and the alleged bankrupt there is nothing sufficient to show that he has not a valid, provable claim for the amount appearing to be due him on the two notes referred to."

The two notes referred to are three hundred seventy-three 33/100 dollars and three hundred forty and 53/100 dollars respectively, amounting in full to seven hundred thirteen 86/100 dollars. (Record, Page 2.)

This present contention by the appellant was not relied on when the cause was argued before the Circuit Court of Appeals and hence not considered.

Assuming therefore it was the allowance of a claim by the Circuit Court of Appeals amounting to \$713.86, these proceedings should be dismissed because appeal to the Supreme Court of the United States is limited to controversies, and allowance or disallowance of claims amounting to \$2000. or over.

Hutchinson v. Otis, 10 Am. B. R. 275.

Barriey v. Barrie, 5 How. U. S. 103.

Gordon v. Ogden, 3 Pet. U. S. 33.

U. S. Bankruptcy Law, Sec. 25.

It seems clear even if this was a claim amounting to two thousand dollars it was not one proved and allowed in the manner contemplated by Sec. 57 of U. S. Bankruptcy Law to which the provision of Sec. 25 of U. S. Bankruptcy Law applies.

In re *Summer*, 101 Fed. 224.

" " *Hornstein*, 122 Fed. 266.

In other words neither the District Court or the Circuit Court of Appeals allowed or disallowed the proof of a claim, but determined only the appellee had a provable claim.

No appeal from the Circuit Court of Appeals is provided for on such finding.

U. S. Bankruptcy Law, Sec. 25.

III.

An inspection of the assignment of errors on appeal to the Circuit Court of Appeals (Record, page 109) and on comparison with the assignment of errors an appeal from that Court to the Supreme Court of the United States (Record page 118) will clearly establish that the assignment now before this Court was not raised before or considered by the Circuit Court of Appeals.

It is well settled that unless a proposition or claim is raised before the Court from which an appeal is taken it is not open before the appellate Court.

Bakshian v. Hassanoff, 186 Mass. R. 255 on Page 259.

Hesard, et al. v. Trull, et al., 175 Mass. R. 239 on Page 241.

Parker v. Parker, 118 Mass. 110 on Page 113.

Armstrong v. Fernandez, 19 Am. B. Rep. 746.

IV.

If the Court desires to further consider the assignment of errors to the first the appellee replies:

"A." The creditor's petition allege

The appellant to be a corporation, duly organized by law and having its principal place of business in Boston, in said District for the greater part of six months before the filing of the petition.

This is a sufficient allegation for jurisdiction.

Sec. 2, United States Bankruptcy Law.

The word persons in the above reference shall include corporations.

Paragraph 19; Sec. 1, U. S. Bankruptcy Law.

"B." The petition alleges the petitioner to be a creditor having provable claims amounting in the aggregate, in excess of securities held by them, to the sum of \$500. and sets forth in detail the nature of such claims.

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This is a sufficient allegation.

Paragraph "b," Sec. 59, U. S. Bankruptcy Law.

"C." That the said J. W. Calnan Co. is a corporation organized under the laws of Massachusetts, and that it is engaged principally in trading and mercantile pursuits, is a good allegation and one that gives jurisdiction.

Paragraph "b," Section 4 U. S. Bankruptcy Law.

"D." The petition alleges the appellant owes debts to the amount of \$1000.

A corporation owing debts to that amount may be adjudged a bankrupt.

Paragraph "b," Sec. 4, U. S. Bankruptcy Law.

"E." The allegations of preference and concealment are sufficiently set forth to establish jurisdiction under the first assignment of error.

Sec. 3, U. S. Bankruptcy Law, entitled "Acts of Bankruptcy."

To the second assignment of error the appellee submits, although the Bankruptcy Law Sec. 18d, provides

"If the bankrupt, or any of his creditors, shall appear, within the time limited, and controvert the facts alleged in the petition, the judge shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury, except in cases where a jury trial is given by this act, and make the adjudication or dismiss the petition," it does not mean the judge must hear witnesses and examine documentary evidence presented.

He may refer under Rule XII General Orders in Bankruptcy, or even without that authority, the taking of testimony to a master or referee and after the report of facts "determine as soon as may be, the issues presented by the pleadings."

Although this has never been determined by the Supreme Court it has been passed upon by Circuit Courts of Appeal.

Clark v. Mfg. & Enameling Co., 4 American Bankruptcy Rep. 351.

In re Lator, 13 American Bankruptcy Rep. 400.

Each of the other assignment of errors clearly request this Court to rule that the inferior court erred in findings of fact, or as a basis for such error assuming certain facts, not established in the inferior court, on which to request rulings of law from this Court.

It is well settled that where the trial court has considered conflicting evidence and made its finding and decree thereon, it will be taken as presumptively correct, and will not be disturbed on appeal, unless an obvious error has occurred in the application of the law or a serious and important mistake has been made in the consideration of the evidence.

Hussey v. Richardson-Roberts Dry Goods Co.,
17 American Bankruptcy R. 511.

Hanck v. Christy, 18 American Bankruptcy R.
330.

Where the findings of fact are assumed this Court will not determine any question of law based on an erroneous presumption.

Respectfully submitted,

JOHN H. BLANCHARD,
HUGH C. BLANCHARD,

Attys for Appellee.

J. W. CALNAN COMPANY *v.* DOHERTY.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE
FIRST CIRCUIT.

No. 212. Argued March 14, 1912.—Decided April 1, 1912.

A ruling of the Circuit Court of Appeals that the petitioning creditors held provable claims is not a judgment allowing or rejecting a claim within the meaning of § 25b of the Bankruptcy Act of 1898, and cannot under § 25a and subparagraph 1 be reviewed by this court.

Where the prerequisites for an appeal to this court specified in subparagraph 1 of § 25b of the Bankruptcy Act do not exist, and the Circuit Court of Appeals does not make the findings of fact and conclusions of law required by clause 3 of General Order 36, the appeal must be dismissed. *Chapman v. Bowen*, 207 U. S. 89.

Appellate jurisdiction over a ruling of the Circuit Court of Appeals in a bankruptcy matter may not be exercised by this court by virtue of § 6 of the Judiciary Act of March 3, 1891, c. 517, *Tefft v. Munsuri*, 222 U. S. 114.

Appeal from 174 Fed. Rep. 222, dismissed.

THE facts are stated in the opinion.

Mr. Clarence F. Eldredge for appellant.

The court declined to hear further argument. *Mr. John H. Blanchard* and *Mr. Hugh C. Blanchard* filed a brief for appellee.

Memorandum opinion by direction of the court. By
MR. CHIEF JUSTICE WHITE.

Involuntary proceedings in bankruptcy were commenced against the J. W. Calnan Company, appellant here, in the District Court of the United States for the District of Massachusetts, by a creditor owning claims aggregating \$713.86. After the filing of an answer by the alleged bankrupt, two creditors—one owning a judgment for \$1,038.71 and the other asserting a claim of \$963.75—intervened and joined in the petition.

The Calnan Company was adjudicated a bankrupt on May 13, 1909. Eight days afterwards an appeal was prayed for and allowed from that decision. In the assignment of errors, in addition to alleging that the court erred in adjudicating it a bankrupt, the Calnan Company alleged that the court erred in finding that the alleged creditors owning claims for \$713.86 and \$963.75 respectively were creditors holding valid provable claims against it. In many forms of statement it was also alleged that the court erred in finding that the company had made an unlawful preferential payment to a creditor. The Circuit Court of Appeals affirmed the judgment. (174 Fed. Rep. 222.) Within thirty days after the denial of a petition for a rehearing this appeal was taken.

Section 25b and subparagraph 1 of the Bankruptcy Act are mainly relied upon by counsel for the appellant as conferring jurisdiction upon this court to review the judgment of the Court of Appeals. The clauses referred to authorize an appeal to this court in bankruptcy proceedings from any final decision of a Court of Appeals allowing or rejecting a claim "where the amount in controversy exceeds the sum of two thousand dollars, and the question is one which might have been taken on appeal or writ of error from the highest court of a State" to this court. The contention, however, is untenable. By § 25 (a) of

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Opinion of the Court.

the Bankruptcy Act appeals in bankruptcy proceedings are authorized to the Circuit Courts of Appeals in three specified cases, two being: "(1) From a judgment adjudging or refusing to adjudge the defendant a bankrupt;" and, "(3) from a judgment allowing or rejecting a debt or claim of five hundred dollars or over." It is manifest that the ruling made in the course of the determination of an issue as to alleged bankruptcy upon a subordinate issue as to whether or not the petitioning creditors held "provable" claims is not a judgment allowing or rejecting a debt or claim within the meaning of the section, and it is also evident that a decision by the Court of Appeals upon such a ruling is not a "final decision . . . allowing or rejecting a claim under this act," within the meaning of § 25b. See in this connection *Duryea Power Company v. Sternbergh*, 218 U. S. 299, 300. Aside, however, from these considerations the prerequisites for an appeal to this court specified in subparagraph 1 of § 25 (b) do not exist, nor could the appeal be entertained inasmuch as the Court of Appeals did not make the findings of fact and conclusions of law required by clause 3 of General Order 36. *Chapman v. Bowen*, 207 U. S. 89, 90.

The further contention that jurisdiction may be exercised by virtue of § 6 of the Judiciary Act of March 3, 1891, is shown to be without merit by our recent decision in *Tefft, Weller & Co. v. Munsuri*, 222 U. S. 114.

Appeal dismissed.